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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 ESPIRITU SANTO HOLDINGS, L.P.,

5 Petitioner,

6 v.

19 Civ. 3930 (CM)

7 LIBERO PARTNERS, L.P. and  
8 ESPIRITU SANTO TECHNOLOGIES,  
9 LLC,

10 Respondents.

Hearing on  
Temporary Restraining Order

11 -----x

New York, N.Y.  
May 13, 2019  
11:07 a.m.

12 Before:

13 HON. COLLEEN McMAHON,

14 District Judge

15 APPEARANCES

16 HOGAN LOVELLS US LLP  
Attorneys for Petitioner  
17 BY: DAVID DUNN, ESQ.  
RICHARD C. LORENZO, ESQ.  
18 MARK CHESKIN, ESQ.  
ALAN MENDELSON, ESQ.

19 REED SMITH LLP  
Attorneys for Respondents  
20 BY: STEVEN COOPER, ESQ.  
JOHN B. WEBB, ESQ.  
21 COLIN A. UNDERWOOD, ESQ.  
22 JONATHAN P. GORDON, ESQ.

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(Case called)

THE LAW CLERK: Counsel, please state your appearances for the record.

MR. DUNN: Your Honor, I'm David Dunn with Hogan Lovells US, LLP, and with me are my partners Richard Lorenzo and Mark Cheskin. They have been admitted in this matter *pro hac vice*.

MR. COOPER: Judge, good morning. Steven Cooper for the respondents from Reed Smith, with my colleagues from Reed Smith as well as Francisco Flores, who is of counsel for Lusad, one of the parties in the action.

THE COURT: Don't your firms employ women lawyers? I'm just curious. It's been a very long time since I've seen such a group.

Okay. Long time no see, Mr. Dunn.

MR. DUNN: Yes, your Honor. It has been quite awhile.

THE COURT: It's very nice to have you in my courtroom.

MR. DUNN: Thank you. It's a pleasure to be here.

THE COURT: Okay. So we've been working, Ms. Brody and I, very, very hard over the last few days, in the absence of any submission from the respondents, which arrived at 8:00 this morning. That was not helpful. I am underwhelmed, to say the least, by the fact that notice of the earlier proceeding was given on May 1st. So what? It's more notice than your

J5d1lespa

1 people gave to them before obtaining *ex parte* orders in Mexico.  
2 And we all work 24/7, 365 anyway, so break my heart. So as far  
3 as I'm concerned, it is the respondent's own fault that the  
4 respondent didn't have somebody here on the 2nd. I called, I  
5 asked, I said: Is anyone here for the respondent? No one was  
6 here. It is arrogant, to say the least, that Reed Smith Shaw &  
7 McClay, a firm with which I worked extensively in my younger  
8 years -- very fine firm, finest firm in Pittsburgh -- would  
9 have shown up in court under these circumstances, having had  
10 the better part of two weeks' notice of an event, having filed  
11 papers two hours before the hearing, at a time when they could  
12 not possibly be helpful to the Court. But times have changed.

13 So Mr. Dunn, it's your motion.

14 I understand neither party has brought the people who  
15 submitted the affidavits.

16 MR. DUNN: No, your Honor. Our declarant -- we have  
17 one declarant -- is in the courtroom and would be available if  
18 necessary for cross-examination. He is present. It is my  
19 understanding -- and Mr. Cooper will speak for himself. I  
20 understand that none of his witnesses are present, although  
21 given the fact that I first saw these papers at about 20 after  
22 8 this morning -- and it took me quite awhile to download them  
23 because I didn't have any courtesy copies -- I have not read  
24 the affidavits or all of the exhibits entirely. I have read  
25 the memorandum, but I certainly think at this point we could

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1 not legitimately be expected to be prepared to cross-examine  
2 those witnesses under any circumstances, but I understand  
3 they're not even in the courtroom or available, if the Court  
4 was willing to indulge that and we had the time and ability to  
5 do it. But our witness, our declarant, is present and is  
6 available, as we understood was our obligation, your Honor --

7 THE COURT: Indeed it is.

8 MR. DUNN: -- on a preliminary injunction motion.

9 THE COURT: Indeed it is, because the burden is on  
10 you.

11 MR. DUNN: Your Honor, I have one preliminary matter,  
12 and I want to put this on the record.

13 As your Honor is aware, there are two respondents.  
14 Lusad in fact is not a respondent, although Mr. Cooper said  
15 that it was. But two respondents are Llbero Partners, L.P.,  
16 that is the other of the two disputing partners, and Espiritu  
17 Santo Technologies, LLC, which is the partnership. Mr. Cooper  
18 purports to represent the partnership. We dispute his right  
19 and authority to do that, because the partnership is governed  
20 by the partners agreement. Our partners had nothing to do with  
21 retaining him to represent them, and it is required, as we  
22 understand it, that that happen. In addition, we don't believe  
23 that the two respondents are united in interest.

24 I don't propose to deal with this issue right now, but  
25 my partner Mr. Lorenzo wrote to Mr. Cooper as soon as he

J5d1lespa

1 entered his appearance, informed him that we objected, that we  
2 believe he had a conflict, and that our position was that if  
3 he's representing the partnership --

4 THE COURT: Look, if you want to deal with it, deal  
5 with it now, because here's what's going to happen, Mr. Dunn.

6 MR. DUNN: Okay.

7 THE COURT: Here's what's going to happen. We're  
8 going to have a hearing, you're going to do whatever you're  
9 going to do. Tomorrow there will be a decision, because I'm  
10 leaving the country, and guess what? I'm then done with this  
11 case. I don't decide underlying disputes. I have nothing to  
12 do with them. You people have signed an arbitration agreement.  
13 I don't get to decide the underlying disputes. You can't keep  
14 coming to me. I get one shot.

15 MR. DUNN: I understand.

16 THE COURT: One shot. Prearbitral relief. That's it.  
17 It's all I have jurisdiction to do. So any issue that you  
18 think needs to be resolved by me will be resolved in the next  
19 24 hours.

20 MR. DUNN: I object to Reed Smith representing the  
21 partnership. It is not authorized and it is a conflict, your  
22 Honor.

23 THE COURT: Okay. Reed Smith?

24 MR. COOPER: Well, your Honor, I'm going to make some  
25 preliminary remarks, then I'm going to have my colleague

J5d1lespa

1 address that specific issue.

2 First of all, your Honor, we do apologize for the  
3 submission of the papers this morning. However, you do need to  
4 understand the circumstances here. We were not contacted about  
5 this until Tuesday, late Tuesday of last week. We were  
6 retained Wednesday morning. As you see from the submissions,  
7 we put in five affidavits, five declarations, with exhibits.

8 THE COURT: And I only had time to read one of them.

9 MR. COOPER: Well, what we tried to do is condense it  
10 right up front in the memorandum of law.

11 THE COURT: I read evidence. I read evidence.

12 MR. COOPER: Right. It's cited there, your Honor.

13 My point is, despite the size of the papers, we think  
14 that we could give you two or three reasons to immediately deny  
15 the motion.

16 I just want to make one point on the diversity point.  
17 Because this was such a fire drill, I went through probably 10  
18 colleagues of mine, associates and partners, to get assistance,  
19 many of whom are women, and they weren't available, but I do  
20 want you to know that Reed Smith's commitment to that is  
21 genuine, real, and you will likely not see a male bench, male  
22 table in the future from Reed Smith. I did want to just let  
23 you know that, your Honor.

24 On the specific point about representing the  
25 defendant, I'm going to turn it over to my colleague Colin

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Underwood.

MR. UNDERWOOD: Good morning, your Honor.

THE COURT: Mr. Underwood.

MR. UNDERWOOD: The entity at issue, Espiritu Santo Technologies, LLC, is a Delaware entity, and of course, it's a juridical entity. It can't appear in court accept through appointed counsel.

THE COURT: That's true. The question is, are you conflicted, because the partnership agreement, which makes everybody, front table and back table, 50/50 partners, does not consent to your representation.

MR. UNDERWOOD: Right. So in a situation where you have 50/50 representation of the partnership, the parties, in a situation like this, where they have made the LLC an adverse party by putting it on the other side of the "v," making it a respondent to their petition, one can assume that the two 50/50 parties will not agree on counsel, and the entity cannot go unrepresented. Under Delaware law, the members of an LLC generally have the right to their input into how the LLC acts. The exception under Delaware law -- there are actually three exceptions, two of which aren't relevant here, but where a member of an LLC has demonstrated sufficient adversity to the LLC itself, that partner can be excluded from decisions about counsel and decisions about strategy and litigation. And I have two cases --

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1 THE COURT: Citations, please?

2 MR. UNDERWOOD: Yes. And I can hand the cases up,  
3 your Honor.

4 THE COURT: Thank you.

5 MR. UNDERWOOD: *SBC Interactive v. Corporate Media*  
6 *Partners*, 1997 WL 770715; and *Kalisman v. Friedman*, 2013 WL  
7 1668205.

8 THE COURT: And your position is that since the  
9 petitioners have chosen to sue the LLC, with their 50 percent  
10 members, that they've effectively eliminated themselves from  
11 having anything to say about who will represent --

12 MR. UNDERWOOD: They've demonstrated that they're  
13 adverse, and the Delaware courts recognize the practicality  
14 that when you have declared yourself adverse to the entity, you  
15 have forfeited your right to have a say in how the  
16 representation proceeds.

17 I also note that what we're talking about here is the  
18 application, the petition this morning. We're not addressing  
19 right now what may happen in the arbitration or any other  
20 disputes between the parties. And if you review the petition  
21 and the memorandum of law in support of the petition, they use  
22 the unitary construct "respondents" throughout. Even at times  
23 when it doesn't make sense, they say "respondents use their  
24 control of ES Technologies." Okay? So they have clearly, in  
25 the petition, unified the two and have not distinguished that



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1 L1bero did something that caused ES Technologies to do  
2 something. They have written about it as "the respondents"  
3 have done this, that, and the other thing. So we think under  
4 the circumstances -- and if you'd like me to hand up the cases  
5 or --

6 THE COURT: I would.

7 MR. UNDERWOOD: Okay. Let me -- there are three  
8 copies of each.

9 THE COURT: One copy will be fine.

10 MR. UNDERWOOD: Yes. I wanted to give opposing  
11 counsel a courtesy copy as well.

12 THE COURT: Very kind of you.

13 MR. UNDERWOOD: And your Honor, these cases deal more  
14 with the question of whether there's privilege in the  
15 circumstance as against a dissenting member of the LLC, but if  
16 you turn to the *Kalisman* case, if you turn to page 7 of that --  
17 let me see -- page 6 of that case --

18 THE COURT: Which one is *Kalisman*?

19 MR. UNDERWOOD: The 2013 one.

20 THE COURT: I've got two copies of *SBC*.

21 THE LAW CLERK: I'm sorry. That's my fault.

22 THE COURT: I've got three copies of *SBC*.

23 MR. UNDERWOOD: Oh, we'll trade.

24 THE COURT: I was happy to see that my old friend Gil  
25 Sparks was on that case, but it was a 1997 case, so --

J5d1espa

1 MR. UNDERWOOD: If you turn to page 6 of the 2013  
2 case, *Kalisman* --

3 THE COURT: Yes.

4 MR. UNDERWOOD: -- it states there are three  
5 recognized limitations, and the case in particular dealt with  
6 the directors' ability to access privileged information, which  
7 they've also asserted. In saying that Reed Smith is not  
8 entitled to represent the LLC, they say they're entitled to get  
9 all privileged communications we have. If you look at third:  
10 "A board or committee can withhold privileged information when  
11 sufficient adversity exists between the director and the  
12 corporation such that the director could no longer have a  
13 reasonable expectation that he was a client of the board's  
14 counsel." And again, by instituting an action and a petition  
15 in this court in which they have much to say about the conduct  
16 of respondents, one of whom is the LLC that they are a member  
17 of, we believe they've satisfied the threshold of adversity to  
18 allow us to proceed in this hearing today.

19 THE COURT: Okay.

20 MR. DUNN: Your Honor, the partnership is, as far as  
21 we're concerned, a nominal respondent here. I don't think the  
22 petition can possibly be fairly read as creating adversity with  
23 the partnership. It is adversity with the partners and between  
24 the partners, and I think the Court understands that that is  
25 the issue. They didn't try to ask us whether we could agree on

J5d1lespa

1 the retention of counsel, and I think the fundamental point  
2 here is that -- and I don't hear -- is it Mr. Underwood? I  
3 apologize.

4 MR. UNDERWOOD: Yes.

5 MR. DUNN: I don't hear Mr. Underwood addressing the  
6 fundamental issue, and that is, where the partners have a  
7 dispute, where the partners are 50/50 partners and have a  
8 dispute about the management and operations of the partnership,  
9 it cannot be said that one of them is aligned with and the  
10 other one is antagonistic to the partnership. Rather, there's  
11 a dispute between partners. The partnership is obviously a  
12 necessary party. My point is, each should be represented by  
13 separate counsel. And we would not argue, if Reed Smith were  
14 representing only the adverse partner, that we're entitled to  
15 their work product or that we have the right to get their  
16 information, but they create all of that problem by trying to  
17 represent both the partnership and the partner. That is their  
18 doing. They didn't come to us and ask us who should be  
19 representing them, they didn't select separate counsel, and our  
20 point is, that's what should be done. Hopefully by agreement,  
21 but if not agreement, certainly by separate counsel, and one  
22 partner cannot merely --

23 THE COURT: Look, it might have helped if you had  
24 styled your caption as Llbero Partners, L.P., Respondent, and  
25 Espiritu Santo Technologies, Nominal Respondent. It would have

J5d1espa

1 kind of helped if you had done that. Then it would have been  
2 quite clear what your position was all along.

3 MR. DUNN: But I think if you read the petition and  
4 you read our papers --

5 THE COURT: I agree with you. I agree with you.

6 MR. DUNN: -- it's clear about what the position is  
7 and the facts, and why the partnership is a respondent.

8 THE COURT: And the carelessness of the word  
9 "respondents," this is between you and Llbero. I understand  
10 that.

11 MR. DUNN: Right. That is the dispute. And the whole  
12 issue is control of and the operation of the partnership and  
13 the petition and the request for arbitration.

14 THE COURT: Right. Which would be decided in an  
15 arbitration.

16 MR. DUNN: Right. And the petition and the request  
17 for arbitration cannot fairly be read otherwise, your Honor.  
18 It cannot be the case that they thought we were making an  
19 argument that we had become antagonistic to the partnership.

20 THE COURT: Well, it occurs to me that this is just  
21 all a fight for another day, because I will be listening to  
22 Reed Smith knowing that you really are suing Llbero and not  
23 Espiritu Santo except as a technical nominal respondent. If  
24 some day you have a dispute over whether you can get some or  
25 all of Reed Smith's work product, it won't be my problem

J5d1lespa

1 because you'll be long gone from me and I won't have you back.  
2 So I'm not going to interrupt this hearing to demand that  
3 Espiritu Santo get new counsel.

4 MR. DUNN: I understand that, your Honor, and I merely  
5 wanted -- not merely -- I wanted to make sure that issue was on  
6 the record. And we're happy to agree, and we understand your  
7 directive, that that is a fight for another day. I merely  
8 wanted to make sure we were reserving our rights to have that  
9 fight --

10 THE COURT: Your rights are reserved.

11 MR. DUNN: -- in an appropriate forum at an  
12 appropriate time.

13 THE COURT: And so are yours.

14 MR. UNDERWOOD: I just wanted to note for the record,  
15 your Honor, that the relief they seek -- there's a question  
16 now -- is it meant to read on both Llbero Partners and ES  
17 Technologies?

18 THE COURT: Could we worry about that later?

19 MR. UNDERWOOD: Okay.

20 THE COURT: All right. Mr. Dunn, it's your motion.  
21 If you have proof to give me other than the proof that you have  
22 already provided, please provide your proof.

23 MR. DUNN: Your Honor, I have not been able to discuss  
24 with my client any of the contents or virtually any of the  
25 contents of the affidavits that were submitted by the

J5d1lespa

1 respondent, so in response to that, I would fully anticipate  
2 that we would have additional proof, but since I didn't see  
3 them till 8:30 this morning and I didn't see my clients until  
4 9:30 this morning, we have not had an opportunity to do that.  
5 If your Honor is going to consider those applications, we have  
6 nothing more affirmatively on the application, but if your  
7 Honor is going to consider their papers --

8 THE COURT: I am.

9 MR. DUNN: -- then I want to cross-examine their  
10 witnesses. Where are they?

11 THE COURT: They don't have them.

12 MR. DUNN: Well, then I move to strike the  
13 declarations.

14 THE COURT: They're stricken.

15 MR. DUNN: Okay. Then I have nothing further. But I  
16 want to make clear that our declarant is available for  
17 cross-examination if they wish to cross-examine him, and we'd  
18 be happy to put him on the stand to verify his declaration, but  
19 I'm assuming that's form over substance, and beyond that, we  
20 have nothing more.

21 MR. COOPER: Well, your Honor, there was no notice  
22 that this was going to be a hearing with testimony. I  
23 understand it could be.

24 THE COURT: You don't have to have notice there was  
25 going to be a hearing.

J5d1lespa

1 MR. COOPER: I understand, your Honor.

2 THE COURT: They have a burden, you have a burden, to  
3 raise -- if all I were confronted with were two sets of  
4 affidavits, I'd throw you all out, because you tell entirely  
5 different stories. But this is a hearing, and I can hear this  
6 man testify, and I can see him testify, Mr. León, and you can  
7 ask him questions. And the same thing cannot happen to your  
8 person, because he's not here, because he didn't think it was  
9 important enough to come, from Mexico. If he thought it was  
10 important enough to come, he would be here.

11 MR. COOPER: Okay, your Honor. Then I will --

12 THE COURT: Mr. Covarrubias, or however you pronounce  
13 it.

14 MR. COOPER: Yes, your Honor.

15 Your Honor, I believe I can still oppose this motion,  
16 though I would say that the declarations should be admitted  
17 into evidence. They've been presented to the Court.

18 This is, as you indicated, a narrow decision that you  
19 have to make. You're not deciding all of the underlying  
20 disputes. There are --

21 THE COURT: No. I know that there are underlying  
22 disputes, none of which I intend to decide.

23 MR. COOPER: Right.

24 THE COURT: The issue is whether there are things that  
25 can and should be stopped so that those underlying disputes can

J5d1lespa

1 be decided by someone other than myself. The issue is whether  
2 the petitioners have demonstrated that they are likely to  
3 prevail in the underlying arbitration. That is what they must  
4 demonstrate. That's what likelihood of success means.

5 MR. COOPER: Right.

6 THE COURT: Not likelihood of success that they will  
7 get to arbitrate as opposed to litigate in a Mexican court, but  
8 likelihood of success that they will actually win at the  
9 arbitration. If you take their papers at face value, they've  
10 done a very good job of that. It's hard to take their papers  
11 at face value in view of your papers, which I can't pretend I  
12 haven't read Mr. Covarrubias's affidavit because I did. It's  
13 the one thing that I read, assuming that he would be here,  
14 assuming that this was important enough to him that he would  
15 get on a plane from Mexico City and come up here to New York  
16 and deal with it.

17 MR. COOPER: Your Honor, it is important to him.

18 THE COURT: Really? Not important enough.

19 MR. COOPER: I have his federal counsel who works on  
20 behalf of Mr. Covarrubias here. I can put in evidence through  
21 him.

22 THE COURT: You can. You certainly can.

23 MR. COOPER: Okay. And I will do that if need be.  
24 But let me first make some legal arguments to you and some  
25 factual arguments I don't think are going to be --



J5d1lespa

León - Direct

1 THE COURT: I'm not there. I don't want argument. I  
2 want evidence, now. I want evidence from them, I want evidence  
3 from you, and then we'll talk about argument. That's how I do  
4 things.

5 MR. COOPER: Okay. Can I point to a couple of legal  
6 issues that may be --

7 THE COURT: No, you can't point to a number of legal  
8 issues. I want evidence. Thank you. But not your evidence  
9 yet. Mr. Dunn's evidence. Mr. Dunn's evidence. If Mr. León  
10 is here, put him on the stand.

11 MR. DUNN: Mr. León.

12 SANTIAGO LEÓN,

13 called as a witness by the Petitioner,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. DUNN:

17 Q. Good morning, Mr. León.

18 A. Good morning.

19 THE COURT: All he has to do is affirm that his  
20 affidavit is what it is.

21 Q. Mr. León --

22 MR. DUNN: May I approach, your Honor.

23 THE COURT: You may.

24 Q. Mr. León, let me show you a copy of the declaration of  
25 Santiago León Aveleyra. Do you recognize that document, sir?

J5d1espa

León - Cross

1 A. I do.

2 Q. Did you prepare that document?

3 A. My lawyers prepared it for me and we revised it together.

4 Q. And did you read that document carefully?

5 A. I did.

6 Q. And did you sign it?

7 A. We did -- I did.

8 Q. And did you understand it was being submitted to this Court  
9 as affirmative evidence?

10 A. Yes.

11 Q. And did you review the attachments to that document to  
12 verify that they were correct?

13 A. Yes.

14 Q. And is that your sworn statement?

15 A. It is.

16 Q. And do you have any reason, sitting here today, to change  
17 anything in that statement in terms of its truthfulness?

18 A. I do not.

19 Q. And do you swear that it is the truth?

20 A. I do swear.

21 MR. DUNN: Nothing further, your Honor.

22 THE COURT: Thank you.

23 You may cross.

24 CROSS-EXAMINATION

25 BY MR. COOPER:

J5d1espa

León - Cross

1 Q. Mr. León, you maintain in your declaration that there's a  
2 company called L1bre Monterrey. Are you familiar with that  
3 company?

4 A. I am not.

5 Q. In your papers you indicate that L1bre Monterrey was going  
6 to make a bid on a concession in Monterrey in violation of the  
7 partnership agreement. Are you aware of that?

8 A. I am aware that there is going to be a public bidding in  
9 the state of Nuevo León, where Monterrey is. I am aware that  
10 we had a board meeting where there was going to be, previously  
11 to -- we were going to constitute a company for Monterrey that  
12 was previously going to be approved of at another board  
13 meeting, which never occurred, and I am aware that there were  
14 negotiations on behalf of Mr. Covarrubias and his  
15 administration with the state of Monterrey because the bidding  
16 process was published and that bidding process asked for a  
17 certified meter, which only we have.

18 THE COURT: "We" being whom, please?

19 THE WITNESS: L1bre, the company, your Honor.

20 THE COURT: I'm sorry. Which company?

21 THE WITNESS: It would be the companies owned by  
22 Espiritu Santo Holdings.

23 Q. Mr. León --

24 THE WITNESS: Technologies. Sorry. Espiritu Santo  
25 Technologies, LLC.

J5d1espa

León - Cross

1 THE COURT: The LLC.

2 THE WITNESS: Yes.

3 THE COURT: The partnership.

4 THE WITNESS: Yes.

5 BY MR. COOPER:

6 Q. Sir, isn't it correct that the technology, the trademark,  
7 the intellectual property is actually owned by the Lusad  
8 entity, not by the partnership?

9 A. I -- I would have to review that. I don't recall.

10 Q. So in asserting that somehow the partnership's rights would  
11 be violated because of the use of intellectual property, you  
12 don't know whether or not the partnership even has any rights  
13 to intellectual property, right?

14 A. Well, the --

15 Q. Sir, I'm asking --

16 A. I'm --

17 THE COURT: You can answer the question yes or no, and  
18 I assure you Mr. Dunn can follow up. He's quite competent.

19 A. Can you repeat the question, please.

20 THE COURT: The question is:

21 Q. Sir, am I correct that the partnership doesn't own the  
22 intellectual property, it's owned by the Lusad entity?

23 A. Yes.

24 Q. And in fact, you registered the trademark for it, correct?

25 A. Our lawyers did.

J5d1espa

León - Cross

1 Q. Yeah. But you signed it, right?

2 A. I don't recall.

3 MR. COOPER: Your Honor, may I approach the witness.

4 THE COURT: You may.

5 Q. Do you recognize this document?

6 MR. DUNN: I'm sorry, your Honor. Could I see what it  
7 is Mr. Cooper is showing to the witness.

8 A. I recognize the name of the Mexican subsidiary, Servicios  
9 Digitales Lusad, but I don't recognize this document. I don't  
10 think I've ever seen it.

11 THE COURT: Okay. I'm just curious. It's a hearing,  
12 so I'd like to see what you're talking about. Was this one of  
13 the exhibits to your papers? Is this Exhibit 5?

14 MR. COOPER: Yes, your Honor.

15 MR. DUNN: I'm sorry. Exhibit 5 to what?

16 MR. COOPER: To the Covarrubias declaration.

17 THE COURT: To the declaration of Mr. Covarrubias.

18 MR. GORDON: It's Exhibit 5 to the Covarrubias  
19 declaration.

20 THE COURT: What did you say, you recognize the name  
21 of Servicios Digitales Lusad?

22 THE WITNESS: Yes, your Honor.

23 THE COURT: But you've never seen this document  
24 before?

25 THE WITNESS: I don't think I have.

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León - Cross

1 BY MR. COOPER:

2 Q. Sir, do you recall in paragraph 3 of your declaration  
3 saying that, "We created and registered the L1bre trade name  
4 and associated trademarks," for the system?

5 THE COURT: The L1bre what and associated trademarks?

6 MR. COOPER: Trademarks.

7 A. Yes, we created the L1bre name.

8 MR. COOPER: Trade name and associated trademarks.

9 A. We created the L1bre trade name and registered it, yes.

10 THE COURT: Who is "we"?

11 THE WITNESS: I am the chairman of the board of the  
12 company, your Honor, and the founder, and we created that name.

13 THE COURT: But who is "we"? What is the company that  
14 you're talking about?

15 THE WITNESS: The company that we're talking about  
16 is -- I believe the original company that formed the name was  
17 Lusad, Servicios Digitales Lusad.

18 BY MR. COOPER:

19 Q. And Lusad is a Mexican company that's governed by Mexican  
20 law, correct?

21 A. It's a fully-owned subsidiary of the US structure, yes.

22 THE COURT: I'm sorry. Wait a minute. That wasn't  
23 the question. Is it a Mexican company?

24 THE WITNESS: It is.

25 THE COURT: Okay. And you say it's owned by whom?

J5d1espa

León - Cross

1 THE WITNESS: By --

2 THE COURT: Wholly owned subsidiary of whom?

3 THE WITNESS: Of Libre's corporate structure.

4 THE COURT: What does that mean, Libre's corporate  
5 structure?

6 THE WITNESS: It means, there is L1bre Holdings, and  
7 its corporate structure in the US owns the subsidiary, the  
8 Mexican subsidiary, which is Servicios Digitales Lusad.

9 THE COURT: One of these Delaware entities owns Lusad?

10 THE WITNESS: Yes.

11 THE COURT: Which Delaware entity; do you know?

12 THE WITNESS: I believe it's L1bre Holdings, LLC.

13 MR. COOPER: Your Honor, I actually can point you to  
14 the corporate chart. I think it would be very helpful.

15 THE COURT: Corporate charts are always helpful.

16 MR. COOPER: It's in the Covarrubias declaration.

17 MR. DUNN: No. That declaration has been stricken.  
18 He can't refer to that declaration, but it's in his  
19 declaration. Why don't we look at paragraph 22 of that.

20 MR. COOPER: Well, it's inaccurate what they have, and  
21 I will --

22 MR. DUNN: There's no evidence of that, your Honor.

23 THE COURT: Wait a minute. We're going to put their  
24 person on. You're going to put the general counsel on and he's  
25 going to testify to the inaccuracies. Right now we have

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León - Cross

1 Mr. León's chart, so you can use that. You can cross-examine  
2 with this, your other chart.

3 He can cross-examine with the telephone book, as you  
4 and I were taught, as young associates, Mr. Dunn.

5 MR. DUNN: Yes, your Honor.

6 THE COURT: He can cross-examine with anything he  
7 wants, whether it's in evidence or not.

8 MR. COOPER: Your Honor, can I hand it up to you.

9 THE COURT: Yes.

10 BY MR. COOPER:

11 Q. Mr. León, have you seen the document I just showed you?

12 A. I have.

13 Q. Did you see it this morning?

14 A. I saw it yesterday -- or this morning, yes. Sorry.  
15 This -- this morning.

16 Q. Do you recognize it as a chart that was submitted in the  
17 declaration of Mr. Covarrubias?

18 A. I see some changes.

19 Q. Well, sir, you originally put in a corporate chart,  
20 correct, in your declaration?

21 A. Correct.

22 THE COURT: Now we can flip it around, because there's  
23 a copy of it sitting right there, I believe.

24 Q. Sir, if you see, we made a couple of changes, highlighted  
25 in yellow?



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León - Cross

1 A. Yes.

2 Q. And in the upper right-hand -- and what we did is  
3 essentially use the one you submitted and we put in some  
4 changes. I want to ask you about those changes.

5 Throughout your declaration you talk about Mr. Salinas  
6 being a partner. Is Mr. Salinas a partner?

7 A. Mr. Salinas is an ultimate beneficiary owner, yes.

8 Q. It's your understanding that he has an ownership interest  
9 in the partnership?

10 A. Yes.

11 Q. If I told you he didn't, would you argue with that?

12 A. He does. I have proof he does.

13 Q. What proof do you have?

14 A. I have direct communication he representing himself as  
15 an -- as a shareholder.

16 Q. Have you seen him sign on behalf of the partnership?

17 A. I haven't seen him sign, no.

18 THE COURT: And how is this relevant to anything I  
19 have to decide?

20 MR. COOPER: It's one of the inaccuracies on here.  
21 The other one is much more important.

22 THE COURT: And how is it relevant to anything I have  
23 to decide?

24 MR. COOPER: Because credibility and proof, your  
25 Honor, throughout is going to be an issue, because there are so

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León - Cross

1 many inaccuracies in the presentation, we could be here all  
2 day.

3 THE COURT: We aren't going to be here all day, and  
4 I'm going to be here all night, and at 10:00 in the morning I  
5 will have done with you all.

6 BY MR. COOPER:

7 Q. I'm going to direct your attention to the yellow box on the  
8 bottom, Llbre Nuevo León. Do you see that?

9 A. Yes.

10 Q. Have you heard of that company?

11 A. No.

12 Q. Are you aware that that company was formed to make the bid  
13 in Monterrey?

14 A. I'm aware of it now that I've been made aware of it.

15 Q. And sir, you say in your declaration that a company called  
16 Llbre Monterrey was created for purposes of that. That's not  
17 correct, right?

18 A. There was a search, there was a bidding process, and he  
19 had -- Fabio Covarrubias had incorporated a company called  
20 Llbre Jalisco. Llbre Jalisco was excluded -- excluded us, the  
21 partners of Espiritu Santo Holdings, L.P., in participating in  
22 that, and with that company, he had asked for a concession,  
23 again, excluding not only Espiritu Santo Holdings, L.P. but --

24 THE COURT: Can I just ask a question to get to the  
25 bottom of this.

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León - Cross

1 THE WITNESS: Yes.

2 THE COURT: Is not Monterrey a city and perhaps the  
3 largest city in Nuevo León?

4 THE WITNESS: It is, your Honor.

5 THE COURT: The state of Nuevo León?

6 THE WITNESS: Correct.

7 Q. And Jalisco is a whole different area, right?

8 A. Jalisco is a whole different area, but it's relevant  
9 because they tried to exclude us. We made that point in the  
10 14th of December board meeting, and they promised and agreed to  
11 regularize, to incorporate Llbre Holdings, LLC to that  
12 structure. Now when we found out that Llbre was going to be  
13 bidding for the concession in Nuevo León, we knew that there  
14 was an entity. Now we know it's called Llbre Nuevo León. We  
15 thought it was called Llbre Monterrey.

16 Q. So in your affidavit, or your declaration, you specifically  
17 say, using initial caps, "It was agreed that Llbre Jalisco and  
18 Llbre Monterrey entities, secretly and wrongfully formed by  
19 Mr. Salinas and Mr. Covarrubias to seek similar concessions in  
20 other Mexican cities, would be formally brought into the Llbre  
21 partnership." I mean, you mentioned two entities. You cannot  
22 identify Llbre Monterrey, correct?

23 A. Correct.

24 Q. And Llbre Jalisco is for a different area, it's not for  
25 Monterrey, correct?

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León - Cross

1 A. Yes. They're two -- they're two entities that were in --  
2 in -- in resolutions mentioned that they were going to do  
3 previous.

4 THE COURT: Since there are very few issues that  
5 interest me, are these resolutions that were adopted by the  
6 board at a time when your 50 percent representative was sitting  
7 on the board and voting?

8 THE WITNESS: They were -- they were voted --

9 THE COURT: Yes or no?

10 THE WITNESS: But they were voted to have previously  
11 acceptance. They -- that's what it specifically says. That --

12 THE COURT: Frankly, Nuevo León is Monterrey. I know  
13 that. I'm not an idiot. So the fact that they ended up  
14 incorporating it with the name of the state instead of the name  
15 of the capital city of the state, it's not going to persuade me  
16 of anything. I want to know who voted to start it.

17 MR. COOPER: Well, your Honor, Exhibit 3 to his  
18 declaration, the board resolution, the board resolution is 7.1,  
19 and --

20 THE COURT: To the declaration of Mr. León?

21 MR. COOPER: Mr. León. He submitted it. He says the  
22 board resolved -- this is 7.1 -- the board resolved, and they  
23 all signed off on it, to constitute a Mexican subsidiary of the  
24 affiliate of L1bre Holding, LLC, so that the new company can  
25 participate in the bidding process for a concession to install

J5d1espa

León - Cross

1 and operate digital taxi meters in the taxis holding  
2 concessions to operate in the city of Monterrey and Nuevo León  
3 and throughout its municipalities.

4 THE COURT: Perfect. And said corporation was in fact  
5 incorporated in Mexico.

6 MR. COOPER: Correct. And, your Honor, and Mr. León,  
7 at 9.1, the same meeting --

8 THE COURT: And it's owned 1 percent by Lusad, and  
9 99.9 percent -- well, 1 percent by Servicios Administrativos  
10 Lusad and 99.9 percent by Servicios Digitales Lusad.

11 MR. COOPER: Right, right. Now, Mr. León --

12 THE COURT: Which is in turn owned by L1bre.

13 MR. COOPER: Correct.

14 BY MR. COOPER:

15 Q. Now, Mr. León, if in fact Nuevo León was owned 99 percent  
16 by Lusad, you would have your appropriate partnership interest  
17 in the outcome of any concession for Nuevo León, correct?

18 A. We were, at that same agreement, in that same decision --

19 Q. Sir, I'd like you to answer my question, what I asked you.

20 THE COURT: You need to answer his question. If this  
21 corporation that was authorized by Exhibit 3 to your  
22 declaration were to bid for the taxi concession in Monterrey  
23 and to win it, you're still a 50 percent partner in that,  
24 right?

25 THE WITNESS: Yes.

J5d1espa

León - Cross

1 THE COURT: And you'd get 50 percent of the profits.

2 THE WITNESS: If it's a fully-owned subsidiary, that  
3 would be the case, for their --

4 THE COURT: So my question to you is: Aren't you  
5 trying to cut off your nose to spite your face -- it's an  
6 American expression, I don't know if it translates well into  
7 Spanish -- by trying to stop the bidding, because if the  
8 corporation in which you have a 50 percent interest doesn't  
9 bid, you will make exactly nothing on the Monterrey concession,  
10 whereas you have an opportunity to make 50 percent of what may  
11 be a lot of money if your company wins the Monterrey  
12 concession?

13 THE WITNESS: That is correct. It was our  
14 understanding that it was the same case as Llbre Jalisco, which  
15 they excluded us from that entity, but if it's a fully-owned  
16 subsidiary of Llbre, that would be okay with us.

17 THE COURT: So it's possible that your understanding  
18 may have changed.

19 THE WITNESS: Yes. If it's -- if it's a Llbre -- if  
20 Llbre Nuevo León is a fully-owned subsidiary of Llbre Holdings,  
21 LLC, yes.

22 THE COURT: If it's in the Llbre family, let's call  
23 it.

24 THE WITNESS: Yes.

25 BY MR. COOPER:

J5d1espa

León - Cross

1 Q. So if that was the case, there would be no misappropriation  
2 of trade secrets through the use of other companies by  
3 Mr. Covarrubias or anyone else, correct?

4 A. I don't know.

5 Q. Well, if the bid is going through Nuevo León and Nuevo León  
6 is in the corporate structure, then it's totally appropriate.

7 A. Yes, if it's a fully-owned subsidiary, and that's the  
8 entity bidding, then we wouldn't have any objection to that.

9 MR. COOPER: Just a couple more questions, your Honor.

10 Q. In your affidavit, in your declaration, sir, you go on and  
11 on, with bullet points on pages 6 through 8, about all the  
12 wrongdoing that Mr. Covarrubias apparently engaged in,  
13 Mr. Salinas engaged in, right?

14 A. Correct.

15 Q. Okay. And there you say that you were told this by Manuel  
16 Tabuenca, correct?

17 A. Correct. He's the comptroller of the company.

18 Q. Okay. Now Mr. Tabuenca hasn't submitted a declaration,  
19 right?

20 A. Not to my knowledge. To this Court? No.

21 Q. Is he in court today?

22 A. No.

23 Q. Do you have any firsthand knowledge about any of the  
24 allegations that you make in paragraph 15, or is it all from  
25 Mr. Tabuenca?

J5d1espa

León - Cross

1 A. Mr. Tabuenca is again, the comptroller of the company. He  
2 came from Uber. He was a comptroller of Uber. He was -- he  
3 was, previously to that, the comptroller for Visa and  
4 MasterCard. He's a very reliable employer.

5 Q. Sir, can you just answer my question.

6 A. He's the one that --

7 THE COURT: Anything you know, you know because the  
8 comptroller told you, is that correct?

9 THE WITNESS: That's correct.

10 THE COURT: Okay. Thank you. I certainly understand  
11 that.

12 Q. And, sir, if there were to be any injury here with regard  
13 to misappropriation of the intellectual property, the injury  
14 would be to the owner of the intellectual property, correct?

15 A. Correct.

16 MR. DUNN: Objection.

17 Q. And owner of the intellectual property, as we established a  
18 few minutes ago, is the Lusad company, correct?

19 A. Well, and to its owners.

20 Q. Who is the owner of the intellectual property?

21 A. The intellectual property, I would have to consult the  
22 counsel. I'm not sure who exactly is the owner, but I think  
23 it's Servicios Digitales Lusad, which is the subsidiary, and  
24 Llibre Technologies, perhaps. I would have to consult.

25 THE COURT: So this document, for example, that I've



J5d1espa

León - Cross

1       been given that was -- it's a trademark registration.

2               THE WITNESS:   Yes.

3               THE COURT:   And the mark is registered to Servicios  
4       Digitales Lusad.

5               THE WITNESS:   Yes.   That's the trademark.

6               THE COURT:   That's the trademark registration.

7               THE WITNESS:   Yes.

8               THE COURT:   And the distinctive mark is L1bre, right?

9               THE WITNESS:   Yes, with a 1.

10              THE COURT:   With a 1 instead of an i.   It just drove  
11       me crazy all weekend typing that one.

12              THE WITNESS:   Yes.

13              THE COURT:   And that's the mark.   And that mark is  
14       owned by Servicios Digitales, which is a 99.99 percent  
15       subsidiary of L1bre Holdings, Delaware.

16              THE WITNESS:   That's correct, your Honor, and --

17              THE COURT:   Which is a hundred percent subsidiary of  
18       Espiritu Santo Technologies, LLC.

19              THE WITNESS:   Yes.

20              THE COURT:   Also Delaware.   Okay.

21              THE WITNESS:   There's another entity that  
22       Mr. Covarrubias and his administration formed called L1bre  
23       Jalisco, which used the L-1-B-R-E and its business model and  
24       technology, to ask for another concession in the state of  
25       Jalisco.

J5d1espa

León - Cross

1 THE COURT: Okay. This particular document, can we  
2 agree, applies only to a trademark registration?

3 MR. COOPER: Yes.

4 THE COURT: The trademark is nice, but the valuable  
5 intellectual property is the stuff that they use to run the  
6 taxi meters, right?

7 MR. COOPER: We have more information to establish  
8 besides the ownership by Lusad, your Honor. We can put that in  
9 through our witness.

10 Your Honor, I have a lot of evidence that there is no  
11 support, other than Mr. Tabuenca's hearsay conversation with  
12 Mr. León, there is no factual support here. I can debunk a lot  
13 of these things, but I don't know if you want to hear it or  
14 not.

15 THE COURT: Right now I've got a witness on the stand.  
16 I'd like you to finish questioning the witness.

17 MR. COOPER: Okay.

18 BY MR. COOPER:

19 Q. Sir, you allege in your bullet points that there are two  
20 sets of books being maintained at Lusad, correct?

21 A. Yes.

22 Q. Have you seen that second set of books?

23 A. I've seen the Oracle platform NetSuite, which differs from  
24 what the administration reported the 14th of December of 2018,  
25 which -- which makes me pretty sure that there are two sets of

1 books that they were keeping.

2 Q. Okay. Did you attach a screenshot of that Oracle platform  
3 that you're referring to in your papers?

4 A. I didn't -- I didn't do the -- the submissions or the  
5 papers. I didn't do it.

6 Q. So if you think there's a second set of books, you didn't  
7 think it was important to actually present that second set of  
8 books to the Court?

9 A. The thing is that that platform was taken away from us. We  
10 don't have access to it anymore. We've asked for -- for  
11 access. They've denied access to us. On several occasions.  
12 And it is today that we don't have access to the -- to the  
13 offices, to the -- to the accounting platform, to anything.  
14 We've asked them, and so has Deloitte, and they have replied  
15 with threats of criminal procedures.

16 Q. So you don't even reference the Oracle platform. I mean,  
17 you say you can't get access to it, but you don't even  
18 reference it. The only substantiation you have for that  
19 particular claim is that Mr. Tabuenca told you that, correct?

20 A. And he takes it out of the platform.

21 Q. And isn't it true that Grant Thornton, a well-regarded  
22 accounting firm, audits the books?

23 A. The audit was -- was agreed to, for Deloitte to do it, not  
24 Grant Thornton.

25 THE COURT: But who is the regular auditor for the

J5d1lespa

León - Cross

1 company?

2 THE WITNESS: It was an auditor which the  
3 administration has relationship with, with their prior  
4 companies, which is Grant Thornton.

5 THE COURT: Just the name of the company.

6 THE WITNESS: Grant Thornton.

7 THE COURT: Grant Thornton. Thank you.

8 BY MR. COOPER:

9 Q. Did you report to Grant Thornton that there was a second  
10 set of books, that we may have a big problem here?

11 A. I haven't reported that.

12 Q. Did Mr. Zayas report that?

13 A. I don't know.

14 Q. Now you also say in your affidavit that before Deloitte  
15 could take over, the laptops were taken from you, is that  
16 correct?

17 A. Sorry?

18 Q. The laptops. You make allegations regarding laptops being  
19 stolen, correct?

20 A. No, I don't. That's what they allege.

21 THE COURT: Yes, I was going to say, I think that's  
22 your allegation, that company laptops, which the petitioners  
23 say they had a perfect right to have and to access, were, quote  
24 stolen. How they could be stolen by the petitioners is not  
25 entirely clear, but -- they were, after all, a 50 percent

J5d1espa

León - Cross

1 owner.

2 THE WITNESS: There was a board meeting, the 14th of  
3 December, where an audit, a forensic audit was going to be  
4 performed by Deloitte. When they started that audit, it was  
5 obstructed by the means of a criminal -- pressing charges of  
6 stealing the computers that were subject to the audit, and --  
7 and they also replied to the request of production of Deloitte  
8 by saying it wasn't a priority for the administration and that  
9 they alleged that we stole the computers that were subject to  
10 the audit.

11 BY MR. COOPER:

12 Q. Sir, did you ask for a declaration from anyone at Deloitte  
13 that they had possession of the two Lusad laptop computers?

14 A. Did I -- can you repeat the question, sir.

15 Q. Did you ask Deloitte to put in a declaration saying that  
16 they have possession of these two laptop computers?

17 A. For this hearing?

18 Q. Yes.

19 A. No, I believe we didn't.

20 Q. Okay. Is there any --

21 THE COURT: Please turn that off.

22 Q. Is there any representative of Deloitte in the courtroom?

23 A. No.

24 Q. Are you familiar with a gentleman named Eduardo Herrera?

25 A. I am.

J5d1espa

León - Cross

1 Q. And are you aware that he was accused of stealing these  
2 laptops soon after the decision to employ Deloitte was made?

3 A. Yes, I am, because we signed -- we signed the contract with  
4 Deloitte in accordance with the agreement that we took the 14th  
5 of December to conduct that forensic audit, and in that  
6 contract there were two people that were going to be the  
7 liaisons with the company and Deloitte. One of them was  
8 Mr. Herrera and the other one was Mr. Tabuenca. When he gave  
9 those two computers to Deloitte, that's when they pressed  
10 charges of theft.

11 Q. Are you aware that there's a security camera video of  
12 Mr. Herrera walking out with a laptop after one of the  
13 employees reported the laptops missing?

14 A. Yes, he was the liaison to do just that, to -- to deliver  
15 that laptop to Deloitte, so I imagine there is a security  
16 camera with him carrying those laptops. That was his job.

17 THE COURT: You're saying it's not theft --

18 THE WITNESS: No, it's not.

19 THE COURT: -- he was authorized to have it, he was  
20 the employee who was authorized to have it, you're a 50 percent  
21 owner, there was supposed to be a forensic audit, you signed a  
22 contract, it's not a theft, this is all a cooked up charge in  
23 Mexico.

24 THE WITNESS: Yes.

25 THE COURT: That's their position. As we know.

J5d1espa

León - Cross

1 BY MR. COOPER:

2 Q. Did Mr. Herrera put in a declaration saying he delivered  
3 those to Deloitte?

4 A. To this hearing?

5 Q. Yes.

6 A. No.

7 Q. Is Mr. Herrera in the courtroom?

8 A. He is not.

9 Q. Okay. So your basis for saying that Mr. Herrera took the  
10 laptops to Deloitte is what?

11 A. It's been established in Mexico, in the criminal  
12 proceedings that the administration brought forth, in the civil  
13 proceedings that they brought forth, and it is our opinion that  
14 also in the --

15 THE COURT: "It's been established." Has there been a  
16 finding that the laptops were delivered to Deloitte?

17 THE WITNESS: Yes, there is a chain of custody.

18 THE COURT: By whom? Who made that finding?

19 THE WITNESS: A finding by -- by us? Or I don't  
20 understand the --

21 THE COURT: Well, how do you know Deloitte has the  
22 laptops?

23 THE WITNESS: Oh, because there is a chain of custody  
24 that went from the company, the company -- the laptops are  
25 property of the company, your Honor.

J5d1lespa

León - Cross

1 THE COURT: I understand that. Herrera took them out.

2 THE WITNESS: Yes.

3 THE COURT: You say he took them out for the purpose  
4 of giving them to Deloitte.

5 THE WITNESS: Yes.

6 THE COURT: How am I supposed to know that Deloitte  
7 has them today? I mean, Deloitte has criminal problems in  
8 Mexico, which I would be very surprised if Deloitte wanted to  
9 talk to these people, but how do I know that Deloitte has the  
10 laptops?

11 THE WITNESS: Oh, I don't --

12 THE COURT: How am I supposed to know that?

13 THE WITNESS: I don't know if we submitted the chain  
14 of custody to this hearing, your Honor. If -- on my testimony,  
15 I guess.

16 BY MR. COOPER:

17 Q. You have no proof that the laptops were actually given to  
18 Deloitte, correct?

19 A. I do have proof. I haven't -- if we haven't provided them  
20 to this hearing, that would be another thing.

21 THE COURT: Are you saying proof was provided to the  
22 Mexican court?

23 THE WITNESS: Yes.

24 Q. But you would agree with me that Mr. Herrera did take the  
25 laptops, correct?



J5d1lespa

León - Cross

1 THE COURT: He not only agrees, he outs it proudly.

2 A. Yes.

3 Q. At the December 14th meeting you had where you adopted the  
4 resolution to create Nuevo León and to make a concession bid,  
5 that was also the meeting where you made a decision to employ  
6 Deloitte, correct?

7 A. Yes.

8 Q. And that was Resolution 1.1. This is Exhibit 3 to your  
9 declaration, correct?

10 A. Correct.

11 Q. Are you aware that Mr. Covarrubias was the one who was  
12 authorized to negotiate with regard to the Deloitte engagement  
13 and the Monterrey concession?

14 A. What -- I was the one going to pay for it. I was the one  
15 petitioning for it. And he was in a clear conflict because he  
16 was the subject of the audit.

17 Q. Okay. Sir, 9.1, you unanimously agreed, at the  
18 December 14, 2018 board meeting, that the managing director of  
19 the company -- Mr. Covarrubias is the managing director of  
20 Lusad, correct?

21 A. He is the CEO.

22 Q. "-- managing director of the company, Fabio Covarrubias  
23 Piffer, is authorized to negotiate and implement the actions in  
24 the terms approved in Resolutions 1-7, inclusive, adopted at  
25 this meeting," and then all the partners signed, correct?

J5d1espa

León - Cross

1 A. No, he didn't sign it. Fabio Covarrubias did not sign.

2 Q. Was it authorized by the partnership?

3 THE COURT: Did you sign?

4 THE WITNESS: I signed it, yes.

5 THE COURT: So you signed the thing that said,  
6 notwithstanding that he's the subject of the audit, the reason  
7 that we're having this forensic audit is that we think this guy  
8 is stealing us blind and we're bringing Deloitte in to look at  
9 that, we're going to let Mr. Covarrubias be our representative  
10 to negotiate and implement this audit.

11 THE WITNESS: If -- if that's what it says, then --

12 THE COURT: Apparently that's what it says.

13 THE WITNESS: Then that wasn't what was discussed and  
14 voted at that -- at that meeting.

15 THE COURT: Did you read what you signed before you  
16 signed it?

17 THE WITNESS: I usually, your Honor, have the  
18 lawyers --

19 THE COURT: It's a very fox in the henhouse -- another  
20 American expression -- kind of thing, to have the subject of  
21 the audit be the person who negotiates with the auditor.

22 THE WITNESS: Yeah, that was definitely not the  
23 agreement. If Mr. Flores changed the redaction, then that's --  
24 that would be another matter, but that was not the agreement.

25 MR. COOPER: Your Honor, it's Exhibit 3 to Mr. León's

J5d1espa

León - Cross

1 declaration. It's not part of our evidence. I'm just using  
2 their own evidence.

3 BY MR. COOPER:

4 Q. Now you also allege that there were improper payments made  
5 to a company named Kichink, correct? In fact, in one of the  
6 bullets on page 7 of your declaration, "Mr. Salinas and  
7 Mr. Covarrubias caused US \$2.7 million to be paid to two  
8 companies named Kichink Services, S.A. de C.V. and N9  
9 Tecnología Mexico S.A. de C.V. Kichink and N9 were ostensibly  
10 to provide services to Lusad; however, there was no contract  
11 and no benefit was provided in exchange for these funds." Do  
12 you recall writing that?

13 A. There is no contract that was provided to us or any results  
14 of what they paid for, not only to these but to MOOK, which is  
15 related to Mr. Covarrubias's son.

16 Q. Sir, are you aware that Kichink and N9 had a substantial  
17 role in developing the technology?

18 A. Kichink was the second provider of technology that we --  
19 that we -- that we worked with, when Mr. Covarrubias insisted  
20 on partnering with us, because we had other options. He said  
21 that we were going to hire top-level CTO and change Kichink,  
22 which he never did, and hired MOOK, which is related with his  
23 son.

24 Q. Okay. What basis do you have for saying Mr. Covarrubias's  
25 son is associated with Kichink?

J5d1espa

León - Cross

1 A. The investigation we -- we -- we -- we found that.

2 Q. What investigation?

3 A. These preliminary findings that were the basis for the --  
4 for the agreement of conducting a forensic audit with Deloitte.

5 Q. Deloitte having conducted yours, correct?

6 A. No. It's been obstructed by your clients.

7 Q. Sir, do you have any documentary evidence indicating that  
8 Covarrubias's son is somehow associated with Kichink or N9?

9 A. Yes, we displayed that on the 14th of December at the board  
10 meeting.

11 Q. Have you attached that evidence to your declaration?

12 A. I'm not aware that we did, no.

13 Q. Are there any representatives from Kichink here who can  
14 testify to that, or N9?

15 A. No.

16 Q. Now, sir, isn't it true that there was a contract and there  
17 is a contract with Kichink?

18 A. No, not that I'm aware of.

19 MR. COOPER: May I approach, your Honor.

20 Exhibit 5 to the Covarrubias declaration.

21 MR. GORDON: Exhibit 4.

22 MR. COOPER: 4. Sorry.

23 Q. Sir, I've handed you a Spanish and English version of a  
24 contract dated December 22, 2017. Have you seen this document  
25 before?

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León - Cross

1 A. This has never been in my view. This probably was  
2 produced.

3 Q. Does that make you change your view as to whether there was  
4 a contract with Kichink?

5 A. No.

6 Q. You don't believe that document --

7 A. I don't believe this is a true contract.

8 Q. What's your basis for saying that?

9 A. Because I've never seen this before. I've asked for it  
10 several times, never produced.

11 Q. And are you saying that Kichink provided no services at all  
12 to --

13 A. There has not been --

14 Q. Let me finish my question, please. -- to Lusad?

15 A. Can you repeat it, please.

16 Q. Are you saying that neither Kichink nor N9 provided any  
17 services to Lusad?

18 A. There have been no report to us that any work has been done  
19 or provided by Kichink or any other entity that Mr. Covarrubias  
20 has hired.

21 Q. I'm not asking if it was reported. I'm asking you, as a --

22 THE COURT: As far as he knows, there wasn't any.

23 Q. Is that what you're saying?

24 A. Yes.

25 Q. You're saying today you know of no services provided by

J5d1espa

León - Cross

1 Kichink or N9.

2 A. Yes, yes.

3 Q. Do you know of any services provided by MOOK?

4 A. No. I know payments provided by the administration, but no  
5 services rendered, no production.

6 THE COURT: Can I ask you a question. Could we turn  
7 to Addendum A. And truly, I don't care whether you read it in  
8 Spanish if you're more comfortable. I'm reading it in English.  
9 My Spanish is not what it used to be. But there is an Addendum  
10 A which is called Descripción de Servicios, Description of the  
11 Services, to be rendered by the consultant.

12 THE WITNESS: Addendum A, okay.

13 THE COURT: A. Okay. And as I say, feel free to read  
14 it in --

15 THE WITNESS: Oh, page 6?

16 THE COURT: Yes.

17 THE WITNESS: 6 in English.

18 THE COURT: It's in Spanish here, if you prefer to  
19 read it in Spanish. There is an English translation, also  
20 page 6. I'm going to be reading it in English. Feel free to  
21 read it in Spanish if you prefer.

22 Take a look at this. This appears to me to say that  
23 Kichink, the party to the contract, the contracting party, the  
24 consultant, is going to develop a program and software,  
25 including the digital taxi meter, the hailing app, and the back

J5d1espa

León - Cross

1 end module and the software management model. In other words,  
2 the thing that you use to create the product. This piece of  
3 paper --

4 THE WITNESS: This is completely wrong, your Honor.  
5 This is a lie. We -- we developed the certified platform with  
6 NullData, which is --

7 THE COURT: Whom?

8 THE WITNESS: The company, Llibre Holdings and Lusad  
9 hired NullData to certify the taxi meter before the Ministry of  
10 Economy, and that's how we got --

11 THE COURT: When did you do this?

12 THE WITNESS: Before the --

13 THE COURT: When did you do this?

14 THE WITNESS: 2016, your Honor.

15 THE COURT: You say this is baloney --

16 THE WITNESS: Baloney.

17 THE COURT: -- because you developed this stuff a year  
18 and a half or two years before this contract was ever signed.

19 THE WITNESS: That's correct, your Honor.

20 THE COURT: Okay. That's your position.

21 THE WITNESS: That is my position.

22 THE COURT: You swear to that under oath.

23 THE WITNESS: I swear to that under oath.

24 BY MR. COOPER:

25 Q. Sir, did you graduate from high school?

J5d1espa

León - Cross

- 1 A. Yes.
- 2 Q. Graduate from college?
- 3 A. Yes.
- 4 Q. What college?
- 5 A. Universidad Anáhuac.
- 6 Q. What was that?
- 7 A. Universidad Anáhuac.
- 8 Q. Where is that?
- 9 A. In Mexico City.
- 10 Q. And do you have any postgraduate degrees?
- 11 A. No.
- 12 Q. What was your degree in at your university, or your
- 13 college?
- 14 A. Business administration.
- 15 Q. Do you have any degrees in computer programming?
- 16 A. No, I don't.
- 17 Q. Do you have training in computer programming?
- 18 A. No, I don't.
- 19 Q. Eduardo Zayas, where did he go to college?
- 20 A. I don't know.
- 21 Q. Do you know what his degree is in?
- 22 A. No.
- 23 Q. Does he have any degrees in computer programming?
- 24 A. I don't know.
- 25 Q. Did you ever ask him?



J5d1espa

León - Cross

1 A. I don't know. I don't remember, no.

2 Q. Did you ever see him at work physically creating computer  
3 programs for the taxi meter industry?

4 A. I don't recall.

5 Q. You don't recall.

6 A. I don't recall that.

7 Q. As you sit here today, can you think of one instance where  
8 you saw Mr. Zayas doing computer programming?

9 A. No.

10 Q. Does he have any postcollege degrees?

11 A. I don't know.

12 THE COURT: And you said something about NullData.  
13 What is NullData?

14 THE WITNESS: NullData is a company in Mexico headed  
15 by a person called Laszlo Palovits. He is the one that got the  
16 contract to develop the digital taxi meter that was certified  
17 under the Ministry of Economy, and that's the one we bid out  
18 and won the concession one year before Mr. Covarrubias and  
19 Mr. Salinas entered as partners of Llbre, our company.

20 THE COURT: You actually won the concession to do this  
21 in Mexico City, you being Espiritu Santo, the Espiritu Santo  
22 side of this partnership --

23 THE WITNESS: Yes.

24 THE COURT: -- in 2016?

25 THE WITNESS: That's correct, your Honor.

J5d1lespa

León - Cross

1 THE COURT: Which was before you entered into  
2 partnership with the Llbre side.

3 THE WITNESS: Yes, yes.

4 THE COURT: I mean, I think of you as the Espiritu  
5 Santo side and the Llbre side.

6 THE WITNESS: Yes. We founded both, both entities.

7 THE COURT: What do you mean, both entities?

8 THE WITNESS: Yes, Espiritu Santo Technologies was  
9 founded by us, we incorporated it before entering into  
10 partnership, as well as Lusad; we founded that company.

11 THE COURT: So you're saying that the Espiritu Santo  
12 folks founded both Espiritu Santo Tech and Lusad and that  
13 Mr. Covarrubias's Llbero group bought into that, subsequently.

14 THE WITNESS: Yes, that's correct. Once we had the  
15 concession and the ongoing business.

16 THE COURT: Got it.

17 BY MR. COOPER:

18 Q. That was 2017, correct?

19 A. I would have to see the date, but yeah, it was around  
20 January -- or November 2017.

21 Q. Do you know what the cut current value of the Espiritu  
22 Santo Technologies entity is today, approximately?

23 A. Can you define "cut value."

24 Q. Define it however you want.

25 A. I don't understand what you mean, "cut value."

J5d1espa

León - Cross

1 THE COURT: Do you mean book value? Do you mean --

2 MR. COOPER: Book.

3 Q. If you were going to sell it, what would you put it on the  
4 market for?

5 A. Well, before your client damaged us --

6 MR. COOPER: Your Honor, I would like him to answer  
7 the question.

8 A. Before there was a conflict of all of this --

9 THE COURT: Well, here's the problem. You know, he is  
10 alleging that he doesn't have any access to the books, to the  
11 business materials, that he's been illegally -- I mean, that's  
12 why there's going to be an arbitration, right, because he's  
13 saying he's being kept away from the books, he's being thrown  
14 off the board, he's not getting information.

15 So at the last time you were aware of what was going  
16 on, let's say December of 2018, I guess the 14th, at the  
17 December 14, 2018 board meeting, because we know you were at  
18 that board meeting, if somebody had said to you, what do you  
19 think you could get for this company?

20 THE WITNESS: Well, there was a valuation by Goldman  
21 Sachs conducted the 4th of October of 2018, valuating the  
22 Mexico City concession only, which, again, we had before we  
23 entered into partnership with Llbero Partners, of \$2.4 billion.

24 BY MR. COOPER:

25 Q. And who met with Goldman Sachs?

J5d1lespa

León - Cross

1 A. I did.

2 Q. Anybody else?

3 A. Mr. Covarrubias.

4 Q. He was at the Goldman Sachs meeting with you?

5 A. There were several meetings with Goldman.

6 Q. And this Monterrey concession, isn't it true that on  
7 Wednesday, May 15th, all that has to be done is a registration,  
8 that the bid does not actually occur on May 15th? Isn't that  
9 correct?

10 A. I don't know. I haven't been a part of it. I've been  
11 excluded.

12 Q. Would you agree with me that this could be a very valuable  
13 asset for Lusad?

14 A. It -- it may well be, yes.

15 Q. Mr. Covarrubias estimated it to generate potentially  
16 \$50 million a year. Do you have any idea whether that figure  
17 is accurate, close to accurate?

18 A. Well, yeah, Monterrey has and Nuevo León has about 50,000  
19 taxicabs, which would be about 1/3 the size of Mexico City. We  
20 have 138,000 taxis in Mexico City, so it would be a substantial  
21 concession.

22 Q. And if in fact, as we discussed earlier, the Nuevo León  
23 entity is the one bidding and that's within the corporate  
24 structure, all the partners would potentially benefit, correct?

25 A. Yes, if it's a fully-owned subsidiary, and not like the

J5d1espa

León - Cross

1 case of L1bre Jalisco, which we were totally excluded, then  
2 yes.

3 Q. Do you have any evidence that L1bre Jalisco did any bidding  
4 at all?

5 A. We -- we were informed that management went with that L1bre  
6 Jalisco to the government to ask for the concession in  
7 excluding us, yes, we do.

8 Q. Who informed you of that?

9 A. We, Mr. Eduardo Zayas informed me of that.

10 Q. Your partner.

11 A. Yes.

12 Q. Anybody else?

13 A. He -- he got it from the people at the government of  
14 Jalisco, yes.

15 Q. And have you seen any written proof that somehow the L1bre  
16 Jalisco entity is making a bid for a Jalisco concession?

17 A. No. We just saw the -- the entity formation, which  
18 excluded us from that company.

19 Q. So other than what Mr. Zayas told you, you have no evidence  
20 that L1bre Jalisco is violating anything.

21 A. Oh, it's certainly violating the trademark. It's a  
22 trademark infringement. We weren't part of it. So you -- you  
23 showed me the trademark registration. They used it without our  
24 authorization. They excluded us. So yeah, they're in  
25 violation.

J5d1espa

León - Redirect

1 Q. You registered the trademark, correct? You registered the  
2 Llibre trademark?

3 A. I believe it was a law firm that registered it, Gonzalez --

4 THE COURT: A Mexican law firm?

5 THE WITNESS: Yes.

6 Q. You were involved in that?

7 A. We instructed them to, yes.

8 MR. COOPER: I have no further questions, your Honor.

9 Thank you.

10 MR. DUNN: May I?

11 THE COURT: Mr. Dunn.

12 REDIRECT EXAMINATION

13 BY MR. DUNN:

14 Q. If we may, let's start, Mr. León, with the ownership. I  
15 just want to be clear here.

16 MR. DUNN: Your Honor, it might help --

17 THE COURT: You can put your chart up.

18 MR. DUNN: Thank you.

19 Q. So this is I believe a replication. Would you look at  
20 paragraph 22 of your declaration.

21 THE COURT: Actually, do we have his declaration?  
22 Because it will be easier for me to see from his declaration.  
23 That's exactly the wrong size for me.

24 MR. DUNN: I'm sorry. Paragraph 10, your Honor.

25 THE COURT: Yes, I have it. It's on page 4.

J5d1lespa

León - Redirect

1 Q. So looking at the chart, Mr. León, and looking at the chart  
2 in your declaration here, Espiritu Santo Holdings, L.P., whose  
3 entity is that? Who owns that entity?

4 A. That's our entity, Mr. Eduardo Zayas and myself.

5 Q. Okay. And Llbero Partners, L.P., who are the principals of  
6 that entity?

7 A. That would be Ricardo Salinas Pliego and Fabio Covarrubias  
8 Piffer.

9 Q. And these two entities are partners in the partnership  
10 agreement, in the partners agreement, is that correct?

11 A. Yes.

12 Q. And the partners agreement calls for the creation of what  
13 entity, looking at the chart?

14 A. It -- it -- it integrates into Espiritu Santo Technologies.

15 Q. That's the Delaware partnership?

16 A. Yes.

17 Q. And does it say anything in the partners agreement about  
18 the downstream entities that were going to be owned or held by  
19 Espiritu Santo Technologies, the Delaware partnership?

20 A. Yes. It says that it has to be replicated in each and all  
21 subsidiaries and downstreaming entities.

22 THE COURT: "It" being 50 percent ownership? What has  
23 to be replicated?

24 THE WITNESS: All the partner agreements, the whole  
25 partners agreement, in every -- in every entity.

J5d1espa

León - Redirect

1 THE COURT: I don't quite understand that.

2 THE WITNESS: The partnership --

3 THE COURT: Mr. Dunn, why don't you point to a  
4 specific provision of the partnership agreement, since that's  
5 what you're talking about.

6 I think you're talking about the sentence that reads,  
7 "The parties hereby agree --"

8 MR. DUNN: Yes.

9 THE COURT: "-- that the board composition and  
10 structure and the appointment procedure for the top management  
11 shall be replicated, from the preceding paragraph, in the other  
12 company affiliates and any new affiliates or subsidiaries that  
13 may be incorporated as part of the company's expansion of its  
14 business as provided in the agreement."

15 MR. DUNN: Yes. Mr. León --

16 THE COURT: So that would mean that the board of each  
17 of the subsidiaries would have to have four directors, two of  
18 which were appointed by Espiritu Santo, two of which were  
19 appointed by Llbero, that there would be all of the officers  
20 and the stuff in Section 5.1(b), every time you formed a new  
21 operating subsidiary, right?

22 THE WITNESS: Correct, yes.

23 BY MR. DUNN:

24 Q. And that's, as the Court just read, the last paragraph of  
25 Section 5.1(b) of the partners agreement.



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León - Redirect

1 A. Yes.

2 Q. Now there's been some discussion about whether Mr. Salinas  
3 was one of the direct or indirect owners. You were questioned  
4 about that by Mr. Cooper. Would you look at paragraph 10.1(b)  
5 on page 16.

6 A. Yes.

7 Q. And this allows the termination of the entire partnership  
8 agreement if any of the underlying partners cease to have a  
9 direct or indirect control of the partnership, is that right?

10 A. That's correct.

11 Q. And did it identify the four people whose direct or  
12 indirect control loss will trigger the right to terminate?

13 A. Correct. It does.

14 Q. Who are those four people?

15 A. Mr. Fabio Covarrubias Piffer, Mr. Ricardo Benjamin Salinas  
16 Pliego, Mr. Santiago León Aveleyra, and Mr. Eduardo Zayas  
17 Dueñas.

18 Q. And the intellectual property that has been discussed, the  
19 trademark and the technology that Null Technologies own, or  
20 Null Technologies developed, where was that? What entity was  
21 that at the level of?

22 A. It was -- it was hired by Servicios Digitales Lusad, but  
23 the Llbero Technologies I think was the entity that should have  
24 held it.

25 THE COURT: Should have held it. Do you know who held

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León - Redirect

1 it?

2 THE WITNESS: No, your Honor, I don't at the moment  
3 know, but it was -- NullData was hired by Servicios Digitales  
4 Lusad.

5 THE COURT: So Null was hired by Servicios Digitales  
6 Lusad.

7 THE WITNESS: Yes.

8 THE COURT: Which is 99 percent owned by L1bre  
9 Holding, which is a hundred percent owned by the Delaware  
10 partnership.

11 THE WITNESS: Yes, correct, your Honor.

12 BY MR. DUNN:

13 Q. Now Mr. Cooper asked you about a company called L1bre Nuevo  
14 León.

15 A. Yes.

16 Q. When did you first hear anything about such a company?

17 A. Today.

18 Q. And before this did you have any awareness of that company?

19 A. No.

20 Q. Do you have any awareness of what company is being used by  
21 the principals to bid in Monterrey?

22 A. I do not.

23 Q. Did you ever ask that question?

24 A. I did.

25 Q. Who did you ask?

J5d1espa

León - Redirect

1 A. I -- I asked at the meeting of the 14th of December to  
2 regularize Llbre Jalisco and to -- if they were going to do any  
3 other entities, to be a fully-owned subsidiary. That's when I  
4 asked. But as for Llbre Nuevo León, today is the first time  
5 that I've ever heard of the entity.

6 Q. And at the time it was understood and acknowledged that  
7 Llbre Jalisco had been created separately, is that right?

8 A. Yes. We were excluded from -- from -- from being a member  
9 of those -- of that company.

10 Q. And the board agreed that that company would come under the  
11 umbrella of Lusad, right?

12 A. It did. It did -- it did agree, in the same agreement that  
13 they're putting forth now.

14 Q. And have you sought documentation that that happened?

15 A. I have, but I haven't received anything.

16 Q. Have you ever received any indication that Llbre Jalisco  
17 has in fact been incorporated under Lusad, as was promised?

18 A. No. And it hasn't, to my knowledge.

19 Q. And as you sit here today, do you have any knowledge  
20 personally of who actually owns Llbre Nuevo León?

21 A. I don't.

22 Q. Now as to this resolution that you were asked about on  
23 December 14th --

24 THE COURT: Where, by the way, is the December 14th  
25 resolution?

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León - Redirect

1 MR. DUNN: It actually is Exhibit 3 to his  
2 declaration, your Honor.

3 THE COURT: Yes, Exhibit 3. I only care about it's  
4 Exhibit 3. I've got Exhibit 4. I've got Exhibit 5. This is  
5 Exhibit 3. And do we have that translated?

6 MR. DUNN: Yes, there's a copy behind -- the Spanish  
7 version appears first and then the English version.

8 THE COURT: Right. Okay. So while we're on this, can  
9 you point out to me where Llbre Jalisco is mentioned in this  
10 document.

11 MR. COOPER: 7.3, your Honor.

12 THE COURT: 7.3?

13 MR. COOPER: Yeah.

14 THE COURT: "The instruction is given for the newly  
15 created company called Llbre Jalisco to restructure its  
16 shareholding structure to incorporate Llbre Holding, LLC as a  
17 controlling shareholder." Got it. Okay.

18 THE WITNESS: And that was because we pointed out the  
19 finding that we found this entity, your Honor, and that it  
20 should be regularized, or put into the corporate structure  
21 instead of being owned by third parties and the management that  
22 formed it, which was the management of Mr. Fabio Covarrubias.

23 BY MR. DUNN:

24 Q. Now all of these resolutions indicate that they bear your  
25 signature, and if you look at the Spanish versions, they

J5d1espa

León - Redirect

1 actually have your signature, is that correct?

2 A. Yes.

3 Q. Do they have Mr. Covarrubias's signature?

4 A. No.

5 Q. Did he ever sign them?

6 A. No, he did not.

7 Q. And who is Julio Belmont Garibay?

8 A. He is a representative for Ricardo Salinas Pliego. He  
9 works for the Lecture Group, which is owned by him, and he was  
10 assigned by Ricardo.

11 THE COURT: I'm sorry, because you said it very fast,  
12 he is the representative of?

13 THE WITNESS: Mr. Ricardo Salinas Pliego, in the board  
14 of Servicios Digitales Lusad.

15 THE COURT: Of Salinas.

16 THE WITNESS: Yes.

17 BY MR. DUNN:

18 Q. Are you aware of a criminal complaint that has been  
19 instigated by Lusad?

20 A. I am.

21 THE COURT: So just so I'm clear, it appears to me  
22 that all of these resolutions are signed by one representative  
23 from the Espiritu Santo side and one representative from the  
24 Llbero Partners side, is that correct?

25 THE WITNESS: The thing that happened, your Honor --

J5d1lespa

León - Redirect

1 THE COURT: Not -- boom. One of the two of you.  
2 Zayas didn't sign, you signed.

3 THE WITNESS: Yes.

4 THE COURT: You're the Espiritu Santo people, right?

5 THE WITNESS: Yes.

6 THE COURT: Covarrubias didn't sign but the personal  
7 representative of Salinas did sign.

8 THE WITNESS: Correct, your Honor.

9 THE COURT: Okay. So one from each partner signed  
10 these resolutions.

11 THE WITNESS: Yes.

12 THE COURT: Okay. That's all I'm trying to establish.

13 BY MR. DUNN:

14 Q. And in the criminal complaint that has been brought, isn't  
15 it true that Lusad's management now alleges that all of these  
16 resolutions are invalid because they are not signed  
17 unanimously?

18 A. Yes, they allege that.

19 Q. That is the basis for the criminal complaint, is that  
20 correct?

21 A. That is correct.

22 Q. And on that basis they have denied that there was an  
23 agreement to change the ownership of Jalisco, is that right?

24 A. Yes.

25 Q. They denied that Deloitte was properly hired, isn't that

J5d1espa

León - Redirect

1 right?

2 A. That's correct.

3 Q. And that is the basis on which they allege that the  
4 transfer of the laptops to Deloitte was stealing, isn't that  
5 correct?

6 A. That's correct, yes.

7 Q. And are you personally a defendant in that criminal  
8 proceeding?

9 A. I am.

10 Q. And where is that --

11 THE COURT: Is this under Delaware law?

12 MR. DUNN: No.

13 THE COURT: I'm asking him.

14 And all these allegations are made under Delaware law,  
15 which governs your dealings with your partners?

16 THE WITNESS: No. It's done under Mexican criminal  
17 law, your Honor.

18 THE COURT: I see. Well, under Mexican law. And  
19 where, in any documents signed by the partners, does it say  
20 that Mexican law governs anything at all?

21 THE WITNESS: It doesn't.

22 THE COURT: It doesn't. I don't know why it doesn't.  
23 Everything is happening in Mexico. It seems to be my life to  
24 deal with disputes that happen in Mexico, but there you have  
25 it.

J5d1espa

León - Redirect

1           And of course, under Delaware law, the signature of  
2 any partner binds the partnership, so --

3 BY MR. DUNN:

4 Q. You were asked some questions about a second set of books  
5 and records by Mr. Cooper. Do you remember those questions?

6 A. Yes.

7 Q. I want the Court to clearly understand. How and when did  
8 you learn about the existence of this second set of books and  
9 records?

10 A. When it was made -- came to my attention by Mr. Manuel  
11 Tabuenca. He was concerned that there were accounting  
12 irregularities.

13 MR. COOPER: Your Honor, I'm going to object on  
14 hearsay grounds.

15 THE COURT: Oh, this is a preliminary injunction  
16 hearing. I get to listen to hearsay. I will give it the  
17 weight that I think it deserves. People who sign contracts  
18 saying they're going to arbitration and be governed by Delaware  
19 law and who go to Mexican courts and seek to enforce things  
20 under Mexican law might well assume I will listen to hearsay,  
21 because that smacks of bad faith to me.

22 BY MR. DUNN:

23 Q. I'm sorry. I think you started to explain what you were  
24 told and who told you. Could you just explain that for the  
25 record, how you learned about these two sets of books and



J5d1espa

León - Redirect

1 records and what you were told and who told you.

2 A. Yes. The comptroller for our company was hired by -- by  
3 us, hiring a headhunting agency. He was the comptroller for  
4 Uber Latin America. He came to work for us. Before working  
5 for Uber, he worked at Visa MasterCard, and he had a good  
6 résumé.

7 Q. When you say "us" --

8 A. Yes.

9 Q. -- was he the comptroller of Lusad, or what entity was he  
10 the comptroller of?

11 A. He controlled all -- all the structure, all the account --  
12 all the accounting for all -- all entities.

13 Q. So he was an officer of each of the entities in which these  
14 two entities, Espiritu Santo Holdings and Llbero Partners, were  
15 50 percent partners.

16 A. Yes, that is correct.

17 Q. So these were conversations between you as a 50 percent  
18 partner and the comptroller of the entities you had an interest  
19 in.

20 A. Yes.

21 Q. And what did he tell you about there being -- who did he  
22 tell you was creating two sets of books and records?

23 A. There were financial records that were produced for the  
24 board meetings, and they contrasted with the digital platform  
25 that was based out of NetSuite, of the company Oracle, which

J5d1espa

León - Redirect

1 they contradicted themselves.

2 Q. So he told you that what was presented to the board  
3 meetings, such as the December 14th board meeting we've talked  
4 about, was different financial figures from what were actually  
5 being kept by the company.

6 A. Yes.

7 Q. And the financial records that vary, that were kept by the  
8 company, were on this Oracle platform.

9 A. Yes, and the audit -- the audit trail was there, so it was  
10 important for us to produce it.

11 Q. And that led to, among other things, to the retention of  
12 Deloitte to conduct an internal investigation, is that correct?

13 A. Yes.

14 Q. Now do you have continuing access to that Oracle platform?

15 A. No.

16 Q. Have you asked for it?

17 A. I have.

18 Q. Who did you ask?

19 A. The officers of the -- of the company and also Oracle  
20 themselves.

21 Q. You're the representative of a 50 percent holder in the  
22 company, and you asked the officers to give you access to the  
23 books and records of the company and they refused, is that your  
24 testimony?

25 A. Yes.

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León - Redirect

1 Q. Now I wanted to go back to the resolution about Deloitte,  
2 because I think there was a little bit of confusion. Do you  
3 have that Exhibit 3? Do you have the resolution?

4 A. No.

5 Q. Let me show you this, and I'm going to call your attention  
6 specifically to Resolution No. 1, which is on page 2.

7 A. Thank you.

8 MR. DUNN: Do you have it, your Honor?

9 THE COURT: Yes, I do. Yes.

10 Q. Does that say anything about Mr. Covarrubias being charged  
11 with negotiating anything with Deloitte?

12 A. No.

13 Q. Thank you. Did you have an understanding that  
14 Mr. Covarrubias was going to negotiate the terms of Deloitte's  
15 engagement?

16 A. No. Because I was the one that was soliciting it, they  
17 asked me that since I was the one soliciting it, then I should  
18 pay for it. I accepted that. And I hired Deloitte as chairman  
19 of the board of the company.

20 Q. And then the Deloitte investigation was derailed by the  
21 criminal complaint in Mexico that we've been talking about, is  
22 that right?

23 A. Yes. They -- they filed the criminal charges for the  
24 computers, and they also answered the production of documents  
25 and relevant information from Deloitte saying it was not a

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León - Redirect

1 priority for the administration and that if they were going to  
2 conduct it, they would conduct it with another firm, even  
3 though the mandate of the board was to conduct it via Deloitte.

4 Q. Under the partners agreement between these two entities,  
5 your entity and the Llbero Partners entity, is there a specific  
6 right to obtain access to books and records of the company and  
7 to audit those books and records by the partners?

8 A. There is.

9 Q. Does that extend to Lusad specifically?

10 A. Yes, it does.

11 Q. And is Section 8.3 of the partners agreement the section  
12 that contains those rights?

13 A. It is.

14 Q. Did you make repeated requests for access to information?

15 A. I did.

16 Q. Who did you make that to?

17 A. Fabio -- Deloitte made it to -- to the CEO, Fabio, which is  
18 head of the administration. Again, we were -- we were denied  
19 access, and criminal complaints came instead of that, civil  
20 complaints in Mexico, even though our jurisdiction, our  
21 agreed-upon jurisdiction was arbitration here in New York.

22 Q. And when you say Fabio, the Fabio you're talking about is  
23 Mr. Covarrubias, is that correct?

24 A. Yes.

25 Q. You made a specific request to him for access to books and

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León - Recross

1 records of the company. Did you make that once or more than  
2 once?

3 A. Well, I certainly did it at the -- at the board meeting.  
4 We did it when I -- when I talked to him over the phone when it  
5 was being obstructed. I can remember those two specific  
6 occasions.

7 Q. And did you ever receive access or information you had  
8 requested?

9 A. No.

10 Q. Mr. Covarrubias denied those requests.

11 A. Yes.

12 MR. DUNN: I have nothing further, your Honor.

13 RECROSS EXAMINATION

14 BY MR. COOPER:

15 Q. Mr. León, let me make sure I understand this. You're  
16 saying you asked for the books and records to Mr. Covarrubias  
17 at the December 14, 2018 board meeting, where these resolutions  
18 were made?

19 A. I said that those financial records and the access to  
20 platforms were to be produced to Deloitte, and Deloitte made  
21 those requests as well to Mr. Fabio Covarrubias directly, which  
22 was answered by Mr. Francisco Flores that they were not going  
23 to be produced, in a specific email.

24 Q. The meeting authorized Deloitte to be hired. Are you  
25 saying you already working with Deloitte before the meeting?

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León - Recross

1 A. No.

2 Q. So Deloitte hadn't asked for anything prior to the meeting?

3 A. Deloitte hadn't, no. I did.

4 Q. You did.

5 A. Yeah.

6 Q. And you also I think testified that you thought there was a  
7 second set of books at the time of the meeting, correct?

8 A. Yes.

9 Q. And that's why you brought in Deloitte, right?

10 A. Correct.

11 Q. And you suspected it was Mr. Covarrubias who was behind  
12 that, right?

13 A. Behind who?

14 Q. Behind the second set of books.

15 A. Yes.

16 Q. Okay. But nonetheless, you authorized him to deal with  
17 Deloitte.

18 MR. DUNN: Objection.

19 A. Not that I recall.

20 Q. All right. The same meeting, where you signed Section 9.1,  
21 it says, "Manager of the company, Fabio Covarrubias Piffer, is  
22 authorized to negotiate and implement the action in the terms  
23 approved in Resolutions 1-7, inclusive, adopted at this  
24 meeting."

25 A. If that's what --

J5d1espa

León - Recross

1 Q. Sir --

2 THE COURT: You know, I can read this. Don't argue  
3 with him. Yes, it says that Mr. Covarrubias is authorized to  
4 negotiate Resolution No. 1 in accordance with its terms.

5 Q. And despite the fact you were so suspicious about  
6 Mr. Covarrubias at the time, you gave him the responsibility of  
7 arranging for Deloitte's audit, is that correct?

8 A. I didn't.

9 Q. So 9.1 is incorrect?

10 A. Mr. Flores went to redact the agreements. Those were not  
11 the ones discussed. Obviously he was conflicted, being the one  
12 subject to the audit.

13 Q. Sir, did you show this Oracle trail to Mr. Covarrubias at  
14 the meeting?

15 A. No. We needed access for it.

16 Q. And you said you had no access at that time.

17 A. At that time we did not.

18 Q. Is there anything in the board minutes from that meeting  
19 that says Mr. León, Mr. Zayas complained they don't have access  
20 to the books and records of the company?

21 A. That was the secretary of -- of the board's responsibility,  
22 not ours.

23 Q. Do you agree with me there's nothing in the record on that?

24 THE COURT: Well, no. Come on. Look, I wasn't born  
25 yesterday. It says: At the request of member Espiritu Santo

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León - Recross

1 Holdings, we're going to hire a forensic outside auditor. I  
2 know how to read that. I know what that means. I credit his  
3 testimony, that he brought that up. I would think anybody who  
4 says he didn't was a liar.

5 MR. COOPER: Your Honor, I refer to 9.1, where they  
6 authorize Mr. Covarrubias --

7 THE COURT: Sloppy drafting is not the province of  
8 just a few lawyers, as we know.

9 I agree with you about what 9.1 says. Sloppy drafting  
10 is not the province of just a few lawyers.

11 BY MR. COOPER:

12 Q. Her Honor was asking questions about proceedings in Mexico.  
13 Lusad is a Mexican entity, correct?

14 A. Yes.

15 Q. It's governed by Mexican law, correct?

16 A. Yes.

17 Q. This is the entity we established earlier has the  
18 intellectual property, correct?

19 MR. DUNN: I can't -- I'm sorry?

20 MR. COOPER: Has the intellectual property.

21 MR. DUNN: He testified he didn't know who had it.

22 A. I don't -- I can't say for sure.

23 Q. Okay. And Lusad Servicios Mexico, did you establish that  
24 company?

25 A. It was established for administrative purposes, I believe.



J5d1espa

León - Recross

1 Q. Yeah. And how about Servicios Administrativos Lusad, what  
2 was that established for?

3 A. Those were for administrative reasons. Holding -- I think  
4 Servicios Administrativos -- Servicios -- Lusad Servicios are  
5 the owners of the laptops.

6 Q. These are Mexican entities, governed by Mexican law.

7 A. Yes.

8 Q. Now Lusad was established before Mr. Covarrubias was even  
9 involved in the deal.

10 A. Correct.

11 Q. So you and Mr. Zayas established that as a Mexican company  
12 under Mexican law, correct?

13 A. Yeah, we established it, because when somebody grants your  
14 concession --

15 THE COURT: That wasn't the question. The question  
16 was --

17 A. Yes.

18 THE COURT: -- when you set them up, you set them up  
19 under Mexican law.

20 THE WITNESS: We did.

21 THE COURT: Not under Delaware law.

22 THE WITNESS: Yes.

23 THE COURT: Or Canadian law.

24 BY MR. COOPER:

25 Q. These two subsidiaries were also established prior to

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León - Recross

1 Mr. Covarrubias being involved in the corporate structure?

2 A. Yes.

3 Q. And the allegations with regard to stealing the laptops,  
4 that occurred in Mexico?

5 A. That occurred in Mexico, yeah.

6 Q. And are you aware of other allegations about Mr. Zayas  
7 altering the concession agreement with Mexico City?

8 A. There is an allegation that he signed a document that we  
9 all were party to him -- he was -- he was told by Mr. Julio  
10 Belmont to attend. Mr. Francisco Flores said -- and  
11 represented he read that document, which was a project, and  
12 Mr. Salinas's representative and operatives, as well as the --

13 THE COURT: I understand nothing of what you're  
14 saying. It's a very simple question. Are you aware that there  
15 are allegations that he altered the terms of the originally  
16 negotiated -- the one you guys originally negotiated -- the  
17 concession with Mexico City?

18 THE WITNESS: No. We didn't alter any -- any --  
19 BY MR. COOPER:

20 Q. No. I'm asking you if you're aware that there were  
21 allegations of that.

22 THE COURT: Charges.

23 Q. Allegations in the proceedings in Mexico.

24 A. Yes.

25 THE COURT: Are you aware that in Mexico they're

J5d1espa

León - Recross

1     alleging --

2             THE WITNESS:   They're alleging, yes.

3             THE COURT:   That he changed the terms of the original  
4     deal.   Which deal, by the way, you negotiated, right, before  
5     Covarrubias?

6             THE WITNESS:   Yes.   We would be so conflicting our --

7     BY MR. COOPER:

8     Q.   And that alteration is alleged to have occurred in Mexico  
9     state, correct?

10    A.   Yes.   There are allegations in two -- in a criminal  
11    complaint and in a civil complaint, where there are injunctions  
12    that we believe are a product of corruption in Mexican courts.

13    Q.   Now, sir, your lawyers came to court asking that  
14    Mr. Covarrubias, through Llbre Monterrey, not be permitted to  
15    bid on the Monterrey concession, is that correct?

16             MR. DUNN:   Objection.   That's not what the order says.  
17    That's a mischaracterization.

18    Q.   You allege that --

19             THE COURT:   Who cares?

20             MR. COOPER:   Should I continue, your Honor?

21             THE COURT:   Believe me, if there's an injunction, I'll  
22    craft it myself.

23    Q.   Sir, and the basis of the papers is largely your  
24    declaration, right?

25    A.   Yes.

J5d1espa

León - Recross

1 Q. And your declaration is not from your firsthand knowledge,  
2 it's from what somebody told you, correct?

3 MR. DUNN: Objection, your Honor.

4 THE COURT: The objection is sustained.

5 Q. The acts of wrongdoing we pointed out earlier, the bullet  
6 points, they all came from --

7 THE COURT: Don't repeat. I'm not a jury. I don't  
8 need it.

9 MR. COOPER: Okay.

10 THE COURT: Time is of the essence.

11 Q. The issue of misappropriation is based in part on your  
12 statement that you've been informed that Llbre Monterrey, an  
13 entity Mr. Salinas and Mr. Covarrubias agreed to bring into the  
14 Llbre family of companies, as required by the partnership  
15 agreement, but failed to do so, intends to bid on a concession.  
16 That's from paragraph 27 of your declaration. Do you recall  
17 that?

18 A. Yes.

19 Q. And I'd like to know who informed you of that.

20 A. It was a public article that came out saying that the  
21 taxicab drivers of Monterrey were protesting this, because it  
22 seemed as though it was a directed public bidding because one  
23 of the basis for the public bidding was a certified taxi meter,  
24 which we hold exclusively in Mexico. In the whole of Mexico,  
25 we're the only ones to have it.

J5d1espa

León - Recross

1 Q. To be more precise, who told you that L1bre Monterrey, an  
2 entity that Mr. Salinas and Mr. Covarrubias agreed to bring  
3 into the family, was going to bid?

4 A. I have a very dear friend that lives in Monterrey that is  
5 acquainted to Mr. Longorria, I think, which is the head of the  
6 transport agency. He said that Mr. Covarrubias had visited him  
7 several times and they were in negotiations, and he should have  
8 informed us of those negotiations, which we weren't.

9 Q. You were told that L1bre Monterrey, initial caps, was going  
10 to be bidding?

11 A. Yes. I guess -- I guess that was a misunderstanding to  
12 L1bre Nuevo León.

13 Q. Mr. Covarrubias, under the resolution from December 14,  
14 2018, had the ability to negotiate the Monterrey concession,  
15 correct?

16 A. Yes, but not the incorporation of the company.

17 Q. But there is no company you could identify called L1bre  
18 Monterrey, correct?

19 A. Now there is. According to your allegations, L1bre Nuevo  
20 León does exist and they have incorporated it, which is a  
21 breach of that agreement.

22 Q. Did you go to Mr. Covarrubias and say, I hear you're  
23 bidding under this company L1bre Monterrey, I'd like to know  
24 what's going on?

25 A. No. There are so many breaches that we've decided to go to

J5d1lespa

1 arbitration.

2 THE COURT: At this point they're not talking. They  
3 filed an arbitration notice.

4 THE WITNESS: Exactly.

5 Q. Did you research --

6 THE COURT: I'm unimpressed by this line of  
7 questioning. It's not going to move me.

8 MR. COOPER: All right, your Honor. We will rest  
9 on -- I will stop my questioning and we'll put our witness on.

10 THE COURT: Well, let's see.

11 Mr. Dunn, are you done?

12 MR. DUNN: We have nothing further, your Honor.

13 THE COURT: Thank you, Mr. León. You may step down.

14 THE WITNESS: Thank you, your Honor.

15 (Witness excused)

16 THE COURT: Mr. Dunn, what about the rest of your  
17 case?

18 MR. DUNN: I have no further witnesses, your Honor.

19 THE COURT: All right. In that case, the appropriate  
20 thing to do, for the poor court reporter, is to break for the  
21 next 45 minutes, give her a chance to rest, give me a chance to  
22 rest, but mostly her. Okay? So I'll see you back here around  
23 1:35.

24 MR. DUNN: I'm sorry. Is the witness he's going to  
25 call going to testify in English?

J5d1espa

1           MR. COOPER: That's one thing we have to establish.  
2 Can you give us five minutes to see whether we need an  
3 interpreter?

4           THE COURT: Well, if you need an interpreter, you'll  
5 have to provide one. This is a civil action. We don't provide  
6 interpreters for civil actions. And he'll have to testify in  
7 English because my Spanish is not good enough.

8           THE REPORTER: And neither is mine.

9           THE COURT: And the court reporter can't take it in  
10 Spanish.

11          MR. DUNN: Thank you, your Honor.

12          (Recess)

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Flores - Direct

## AFTERNOON SESSION

1:41 p.m.

(In open court)

THE COURT: Okay. Mr. Cooper.

MR. COOPER: Thank you, your Honor. We call Francisco Flores, please.

THE COURT: Mr. Flores.

MR. COOPER: I'm going to use the podium. Is that okay?

THE COURT: Please.

(Witness sworn)

THE COURT: Good afternoon, Mr. Flores.

THE WITNESS: Good afternoon, your Honor.

FRANCISCO FLORES,

called as a witness by the Respondents,

having been duly sworn, testified as follows:

## DIRECT EXAMINATION

BY MR. COOPER:

Q. Mr. Flores, are you presently employed?

A. Yes.

Q. And what is your employment?

A. I am counsel for -- internal counsel for Servicios Digitales Lusad and its subsidiaries, Servicios Administrativos Lusad and Lusad Servicios.

THE COURT: Okay. For Servicios Digitales Lusad --



J5d1lespa

Flores - Direct

1 THE WITNESS: Yes.

2 THE COURT: -- and its two subsidiaries, Lusad  
3 Servicios and Servicios Administrativos.

4 THE WITNESS: Correct.

5 THE COURT: Okay. And its two admin subsidiaries.  
6 Thank you.

7 BY MR. COOPER:

8 Q. And are you, in that role, familiar with the business of  
9 what we've referred to as Lusad today and the two subsidiaries  
10 you mentioned?

11 A. Yes, I am.

12 Q. Okay. How long have you been in the position as counsel?

13 A. Since November of 2017.

14 Q. And where do you reside?

15 A. In Mexico city.

16 Q. And are you a Mexican citizen?

17 A. Yes.

18 Q. Okay. Now are you familiar with a bid process that's  
19 upcoming in connection with the city of Monterrey?

20 A. Yes, I am.

21 Q. Can you tell the Court what you know about that process and  
22 the deadlines.

23 A. Yes. Our registration process is currently under way.  
24 That registration process runs from May the 2nd to May the  
25 15th. In order for all interested parties that have the

J5d1lespa

Flores - Direct

1 technology and the ability to provide the -- generally a  
2 service for digital taxi meters may register in order to, in  
3 the near future, participate in a bidding for the awarding of a  
4 concession for -- for such service.

5 THE COURT: Okay. So basically this is designed to  
6 see who will be in the bidding.

7 THE WITNESS: Yeah, who would be eligible.

8 THE COURT: Who would be eligible. Okay. Okay.

9 Q. Is there any timetable presently set out for when the bids  
10 would be submitted?

11 A. Not that I know of. I know that after the registration  
12 process is completed, an evaluation of all the participants  
13 that registered will be conducted, and afterwards, a call or an  
14 invitation for a public bidding process will be issued by the  
15 government of Nuevo León.

16 Q. Now do all of the companies that register get to bid or is  
17 that not the case?

18 A. Yes. Only the companies that register to bid will be  
19 allowed to bid.

20 THE COURT: But you said there's an evaluation. So if  
21 a company registered to bid but the officials in Nuevo León  
22 concluded --

23 THE WITNESS: That they are not eligible.

24 THE COURT: -- that they are not eligible, then they  
25 couldn't bid.

J5d1espa

Flores - Direct

1 THE WITNESS: Correct.

2 THE COURT: But you've got to be, as we say here, in  
3 it to win it.

4 THE WITNESS: Correct.

5 THE COURT: You have to be in the game, so you have to  
6 register by the 15th.

7 THE WITNESS: Correct.

8 THE COURT: Okay.

9 BY MR. COOPER:

10 Q. And could you tell the Court a little about the city of  
11 Monterrey and what the potential value of this concession would  
12 be.

13 A. Well, it is my understanding that in the city of Monterrey  
14 there are around 38,000 taxis, regular taxis, and they provide  
15 service to the city of Monterrey and the Nuevo León area, the  
16 metropolitan area of Monterrey, which is made up of nine  
17 municipalities, so these 38,000 taxis are going to be providing  
18 service in this geographic area, and the bidding process  
19 consists of having them substitute their current analog taxi  
20 meters for digital taxi meters that feature some key safety  
21 enhancements or safety features that the current digital taxi  
22 meters do not possess, such as GPS location and direct link  
23 with law enforcement authorities, etc. So the aim is to  
24 provide a safer taxi service to -- to its users.

25 Q. Is it your understanding that Lusad has the software to

J5d1lespa

Flores - Direct

1 offer in connection with this bid?

2 A. Yes, yes, it does.

3 Q. What, just generally speaking, is the nature of the  
4 software that Lusad has?

5 A. Well, I'm not the technical expert, but from what I have  
6 seen and from what I understand, the software provides all the  
7 abilities to accurately measure the time and distance traveled,  
8 according to the applicable fares approved by the authorities,  
9 it possesses a GPS device that is live, realtime, you do not  
10 need a phone service or -- you understand?

11 THE COURT: Is it the same software that's being used  
12 in the taxis in Mexico City now pursuant to the original  
13 concession?

14 THE WITNESS: My understanding is that it is basically  
15 the same. It would only be changed for the specific city of  
16 Monterrey, specifically the maps and the fare.

17 THE COURT: Yes, obviously Mexico City maps would not  
18 be helpful in Monterrey.

19 THE WITNESS: Yes. Basically all of the remaining  
20 features are the same.

21 THE COURT: Okay.

22 BY MR. COOPER:

23 Q. Now we looked at the corporate structure when Mr. León was  
24 on the stand. Are you familiar with which of the companies  
25 owns the intellectual property, the trademarks, the patents,

J5d1espa

Flores - Direct

1 etc.?

2 A. Yes, it's Servicios Digitales Lusad.

3 THE COURT: Wait a minute. Boom. Servicios Digitales  
4 Lusad is in green on this little chart, right?

5 THE WITNESS: That is correct.

6 THE COURT: Okay. All right.

7 Q. Now were steps undertaken to create an entity to make the  
8 bid for the Monterrey concession?

9 A. Yes. On January 31, 2018 -- no, I'm sorry, 2019, Llbre --  
10 Llbre Nuevo León.

11 Q. And that's the company we were looking at on the chart was  
12 the bottom company earlier today?

13 A. I believe in the chart that we just saw here, Llbre Nuevo  
14 León was not included, but in our chart, yes, it's the one  
15 highlighted in yellow.

16 THE COURT: In yellow. Okay.

17 Q. Now were you involved in the incorporation of Nuevo León in  
18 January of this year?

19 A. Yes, I was asked to review the incorporation documents  
20 before they were executed by Mr. Covarrubias.

21 MR. COOPER: Okay. Your Honor, I'm going to approach.

22 THE COURT: Okay.

23 MR. COOPER: This is also Mr. Covarrubias's Exhibit 3.  
24 Actually, the English translation is shorter than what I'm  
25 showing him. The Spanish --

J5d1lespa

Flores - Direct

1 THE COURT: I'm sorry. What is it?

2 MR. COOPER: Would you like an extra copy?

3 THE COURT: I'd love one. It will be much easier for  
4 me that way. Thank you.

5 BY MR. COOPER:

6 Q. Mr. Flores, can you identify the document I just handed  
7 you.

8 A. Yes.

9 Q. If you can tell the Court what it is, please.

10 A. It's incorporation documents of Llbre Nuevo León. It was  
11 incorporated on January 31, 2019.

12 Q. And is there an indication in this document as to what the  
13 ownership of Nuevo León is?

14 A. Yes. On page 12, there is a chart that says that Servicios  
15 Digitales Lusad is the owner of the 99.9 percent and Servicios  
16 Administrativos Lusad is the other partner with 1 percent.

17 THE COURT: It's very interesting. It's very  
18 interesting. Which two directors of this company were  
19 appointed by Espiritu Santo?

20 THE WITNESS: None.

21 THE COURT: None. I see.

22 THE WITNESS: None.

23 THE COURT: And where is there any indication in this  
24 document that Espiritu Santo has any ownership interest in this  
25 entity?

J5dlespa

Flores - Direct

1           THE WITNESS: Not in this document, your Honor, but  
2           Espiritu Santo Technologies, the partnership, is the sole owner  
3           of Llbre Holding, LLC, which in turn is the controlling  
4           shareholder of Servicios Digitales Lusad in Mexico, which in  
5           turn is the controlling shareholder here in Nuevo León. So  
6           indirectly --

7           THE COURT: Yes, I know that. Are you familiar with  
8           the Espiritu Santo Technologies, LLC partnership agreement?

9           THE WITNESS: Not with the partnership agreement of  
10          Technologies.

11          THE COURT: It says that in any downstream company,  
12          the parties agreed, Espiritu Santo Holdings and Llbero  
13          Partners, that Llbero Partners would appoint two directors and  
14          Espiritu Santo would appoint two directors, but that isn't what  
15          happened here, is that correct?

16          THE WITNESS: Correct. I'm sorry. I misunderstood  
17          your -- your question. I'm familiar with the partners  
18          agreement between Llbero Partners and Espiritu Santo.

19          THE COURT: Correct. And it says that each of those  
20          two partners gets to appoint two directors in any downstream  
21          company that is formed to expand the business. Right?

22          THE WITNESS: Correct. Correct.

23          THE COURT: Bidding in Monterrey would be expanding  
24          the business, would it not?

25          THE WITNESS: Correct.

J5d1lespa

Flores - Direct

1 THE COURT: Okay. So where are the two board members  
2 appointed by Espiritu Santo?

3 THE WITNESS: They are not.

4 THE COURT: They are not. Okay. Thank you.

5 BY MR. COOPER:

6 Q. Do two board members from Espiritu Santo Holdings have an  
7 ownership interest and would they benefit from the Monterrey  
8 concession?

9 A. Yes, they would.

10 Q. How so?

11 MR. DUNN: Your Honor, I know this is a preliminary  
12 injunction hearing, but I think we really ought to get the  
13 witness's testimony, not Mr. Cooper's. I object to him leading  
14 his own witness.

15 THE COURT: Let him ask the next question. I really  
16 thought of that as an introductory question, Mr. Dunn. Let him  
17 ask the next question.

18 MR. DUNN: Okay.

19 BY MR. COOPER:

20 Q. How, if at all, would the partners from Espiritu Santo  
21 Holdings benefit if the Monterrey concession is accepted and  
22 generates income?

23 A. Because they are 50 percent owners of the company sitting  
24 at the top of the corporate chart.

25 Q. As far as you know, was there ever an attempt made to



J5d1espa

Flores - Direct

1 create an entity to bid on the Monterrey concession that would  
2 not benefit either Mr. León or Mr. Zayas?

3 A. No, there was not.

4 Q. Was a company called Llbre Monterrey ever used or  
5 considered in connection with making a bid on the Monterrey  
6 concession?

7 A. No.

8 Q. Was a company called Llbre Jalisco ever used or considered  
9 in connection with making the bid?

10 A. Not for Monterrey, no.

11 THE COURT: How about for Jalisco?

12 THE WITNESS: Well, as far as I know, there hasn't  
13 been any bidding process or formal bidding process in the state  
14 of Jalisco.

15 THE COURT: That too would be an expansion of the  
16 business, right, if there were to be --

17 THE WITNESS: Yes.

18 THE COURT: -- if one were to take the software and  
19 use it in yet another part of Mexico?

20 THE WITNESS: Yes.

21 THE COURT: Yes. Okay. And does Llbre Jalisco have  
22 two board members appointed by Espiritu Santo?

23 THE WITNESS: No.

24 THE COURT: I'm just looking for breaches. That's all  
25 I'm looking for. I'm looking for likelihood of success on the

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Flores - Direct

1 merits of the underlying arbitration. It's the only thing that  
2 interests me, so --

3 MR. COOPER: Your Honor, if I may be so bold, the  
4 likelihood of success on the merits would be with regard to  
5 whether or not there's a misappropriation of the trade secret.

6 THE COURT: No. Likelihood of success on the merits  
7 of the allegations made in the arbitration. The notice of  
8 arbitration alleges numerous breaches of the arbitration  
9 agreement. Breaches of contract. It's a breach of contract  
10 case, okay? So I'm just looking for breaches. Finding a lot.

11 BY MR. COOPER:

12 Q. Mr. Flores, are you familiar with a company called Kichink  
13 or N9?

14 A. Yes.

15 THE COURT: Is that the same company or is it a  
16 different company?

17 MR. COOPER: You can answer.

18 THE WITNESS: I understand they are two different  
19 companies, but they are associated.

20 THE COURT: Okay. Because I didn't understand whether  
21 they were one company or two companies. Kichink, and what was  
22 the other one, N9? Okay. Yes.

23 BY MR. COOPER:

24 Q. What was the -- well, what is your familiarity with Kichink  
25 and N9?

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Flores - Direct

1 A. Well, Kichink is a software development company that was  
2 hired to develop and build a new version of the software that  
3 included some modifications to the original software that was  
4 developed by a company called NullData. My understanding --  
5 and again, I'm not a technical guy -- is that Kichink was to  
6 include certain additional features that were not included in  
7 the first version of the software. And again, my understanding  
8 is that one of those features was the ability to connect in  
9 realtime with the local law enforcement authorities and the  
10 development of the hailing app, which taxi service could be  
11 summoned by users.

12 THE COURT: So you could hail a taxi --

13 THE WITNESS: The hailing app.

14 THE COURT: -- with an app. Okay.

15 Q. Are you aware of whether Mr. Zayas or Mr. León developed  
16 the software?

17 A. I'm -- I don't know.

18 THE COURT: Developed what software?

19 MR. COOPER: The hailing app or the digital -- taxi  
20 digital software.

21 THE COURT: We've got an old version. He just said  
22 Kichink was hired to build a new version of existing software.  
23 Who built the existing software?

24 THE WITNESS: The original version was built by  
25 NullData.

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Flores - Direct

1 THE COURT: What was it called?

2 THE WITNESS: N-U-L-L Data.

3 THE COURT: NullData.

4 THE WITNESS: NullData. NullData was hired by  
5 Servicios Digitales Lusad.

6 THE COURT: Hired by Servicios Digitales Lusad. Okay.  
7 And then Kichink you say has been hired to make a new, improved  
8 version.

9 THE WITNESS: Correct.

10 THE COURT: To update it.

11 THE WITNESS: Correct.

12 THE COURT: Okay.

13 BY MR. COOPER:

14 Q. Were you involved in the -- well, is there a contract with  
15 Kichink?

16 A. Yes, there is a services contract between Kichink Servicios  
17 and Servicios Digitales Lusad, or Servicios Administrativos  
18 Lusad, to be more precise, one of the subsidiaries.

19 Q. Lusad.

20 A. Yes.

21 Q. Did you sign the contract?

22 A. Yes, I did.

23 MR. COOPER: May I approach, your Honor.

24 THE COURT: Sure.

25 MR. COOPER: This is also included.

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Flores - Direct

1 THE COURT: Thank you. Is this the contract? Because  
2 I think I already have a copy of the contract.

3 MR. COOPER: Yes. I used it before.

4 THE COURT: Yes. Same contract.

5 Q. Turning your attention to the signature page, Mr. Flores.

6 A. Yes.

7 Q. Is that your signature on the document?

8 A. Yes, the one on the right is my signature.

9 THE COURT: Wait a minute. The one on the right?  
10 Then I may have a different one. Because Servicios  
11 Administrativos Lusad signed on the left and Kichink signed on  
12 the right.

13 THE WITNESS: I'm so sorry, yes. On left, which is  
14 Servicios Administrativos Lusad signature box, the signature on  
15 the right is mine, the signature on the left -- no. That one.

16 THE COURT: Oh, there are two signatures there.

17 THE WITNESS: Yes, there are two signatures.

18 THE COURT: Got it. Now I understand. There are two  
19 signatures there. Okay.

20 THE WITNESS: That's -- for the powers of attorney,  
21 there have to be two signatures for this kind of contract, on  
22 the part of Lusad.

23 BY MR. COOPER:

24 Q. Is this the contract that formed the relationship for  
25 Kichink to provide the technical services that it did to Lusad?

J5dlespa

Flores - Direct

1 A. Yes, it is.

2 Q. Was the relationship with Kichink discussed either with or  
3 in front of Mr. León?

4 A. Well, I was invited to a couple of board meetings in which  
5 I know that the Kichink issue was brought up and -- and a  
6 description of the services that Kichink was performing and the  
7 fees that was -- were being made to Kichink was discussed.

8 THE COURT: And who was at that board meeting? Was  
9 Mr. León at the board meeting?

10 THE WITNESS: Yes, he was.

11 THE COURT: Okay.

12 Q. Before we go back, I'm not sure I got an answer. Are you  
13 aware of whether Mr. León or Mr. Zayas created the original  
14 technology that Lusad has?

15 A. No, I am not.

16 Q. Are you aware of whether they have provided any  
17 technological improvements to the software?

18 A. No, not themselves. It was all developed by the -- by the  
19 companies that were hired by the -- by the Mexican company.

20 Q. Kichink and N9 and --

21 A. NullData.

22 Q. And NullData.

23 A. Yes.

24 Q. There was some testimony --

25 THE COURT: Wait. Now I'm confused. First you told

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Flores - Direct

1 me the original software was created by NullData.

2 THE WITNESS: Yes.

3 THE COURT: And Mr. León testified this morning that  
4 NullData was hired by him and Mr. Zayas, through Lusad --

5 THE WITNESS: Lusad. That is correct.

6 THE COURT: -- long before Mr. Covarrubias was  
7 involved --

8 THE WITNESS: Yes, that's correct.

9 THE COURT: -- to develop the first version of the  
10 software.

11 THE WITNESS: That is correct.

12 THE COURT: That's all correct.

13 THE WITNESS: Yes.

14 THE COURT: So I've got that right. Okay, good. I  
15 don't want to be confused.

16 BY MR. COOPER:

17 Q. My question was whether Mr. León himself developed the  
18 software or --

19 THE COURT: No. Now, come on. He hired somebody to  
20 do it. I know that. That's a stupid question. Come on.

21 MR. COOPER: It's in his declaration, your Honor, that  
22 he did.

23 BY MR. COOPER:

24 Q. There was some discussion this morning about an individual  
25 named Manuel Tabuenca. Do you know him?

J5d1lespa

Flores - Direct

1 A. Yes.

2 THE COURT: Manuel what?

3 MR. COOPER: Tabuenca, if I'm pronouncing it  
4 correctly, the individual who informed Mr. León in his  
5 declaration.

6 Q. Who is Mr. Tabuenca?

7 A. Mr. Tabuenca was the comptroller for administrative  
8 processes in Lusad, and he was in charge of review -- reviewing  
9 and supervising certain administrative procedures in Lusad,  
10 mainly relationship with key providers and key suppliers.

11 Q. Did there come a time when his role was diminished?

12 A. Yes. When -- when the -- when the current administration  
13 entered, my understanding is, and again, Mr. --

14 THE COURT: The current administration being whom?

15 THE WITNESS: Being the one appointed after the  
16 partnership was executed in November of 2017, the management  
17 headed by Mr. Covarrubias.

18 THE COURT: Okay. So when Mr. Covarrubias took over  
19 as the day-to-day manager --

20 THE WITNESS: Yes.

21 THE COURT: -- Mr. Tabuenca was demoted, as we say?

22 THE WITNESS: Yes. From general comptroller to  
23 comptroller of processes or administrative process. I don't  
24 know his exact title, your Honor.

25 THE COURT: Okay. But from general comptroller to a



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Flores - Direct

1 lesser title.

2 THE WITNESS: Yes.

3 BY MR. COOPER:

4 Q. Did there come a time where he eventually was terminated?

5 A. Yes. He was terminated on the same date that the legal  
6 substruction of computing equipment occurred in December of  
7 2018.

8 THE COURT: I'm sorry. The same date as the what?

9 THE WITNESS: Legal substruction of computing  
10 equipment.

11 THE COURT: What's substruction? I don't understand  
12 that word.

13 THE WITNESS: The stealing of the computers.

14 THE COURT: Oh. Oh, that the computers were provided  
15 to Deloitte. Okay.

16 BY MR. COOPER:

17 Q. Did Mr. Covarrubias invest money in Espiritu Santo  
18 partnership?

19 A. Yes, he did.

20 Q. Do you know how much?

21 A. Around \$20 million himself, and through Llbero Partners,  
22 around \$30 million.

23 Q. Did he --

24 A. Plus he also secured a loan, a banking loan from Banco  
25 Azteca, putting up a collateral, a real estate collateral of

J5d1lespa

Flores - Direct

1 his property.

2 Q. How much was that loan for?

3 A. That loan was for \$18 million.

4 Q. Are you aware of any money that was invested in the  
5 partnership by Mr. León?

6 A. Actual money? No, I am not aware.

7 Q. Are you aware of any money that was invested by Mr. Zayas?

8 A. I am not aware of that.

9 Q. There was some discussion earlier about an altered  
10 concession and charges in Mexico concerning an altered  
11 concession with Mexico City.

12 A. Yes.

13 Q. Are you familiar with that issue?

14 A. Yes.

15 Q. What do you know about that issue?

16 A. I know that on November, the mobility secretary held a  
17 meeting in their offices in which they presented to certain  
18 representatives of the company a document. At that point in  
19 time it was not clear, from my understanding, since I was not  
20 present at that meeting, what the actual document was. We  
21 found one day later, when we had the chance to review the  
22 complete document, that it was in fact an amendment to the  
23 concession that basically nullified all the key economic  
24 aspects of the concession that made this a viable business.  
25 The authorities deleted certain rights that belonged to Lusad

J5d1espa

Flores - Direct

1 under the -- what we believe is the original concession, the  
2 valid concession, and after the fact, one day after, when we  
3 had a chance to review the document as I just mentioned, we --

4 THE COURT: How did this document purport to nullify  
5 the economic aspect?

6 THE WITNESS: Because it amended the concession that  
7 we had been working with in two critical aspects. One of them,  
8 in the concession that we hold to be true, it allows for every  
9 taxi ride to be taken in Mexico City that -- that uses the  
10 digital taxi meters to charge up to 12 pesos per trip, and that  
11 right was deleted from the third version of the concession, and  
12 this third version of the concession only allowed for Lusad to  
13 be paid when a taxi is hailed through -- through the hailing  
14 app, you know, through the phone of a user. And these  
15 represent practically only 5 percent of the possible taxi trips  
16 that occurred daily in the city of Mexico, so basically what it  
17 means is that there were no possibility of having the  
18 sufficient income to allow for the other obligations that  
19 Lusad, as titleholder of the concession, has, you know, which  
20 is to pay and install for the 138,000 taxi meters.

21 THE COURT: And you said the mobility secretary. I  
22 assume that's a government official of some sort?

23 THE WITNESS: Yeah. It's a -- it's a -- the  
24 department of Mexico City that regulates all public  
25 transportation.

J5d1lespa

Flores - Direct

1 THE COURT: Okay. So the mobility secretary called  
2 people into the office and handed them a document and said,  
3 these are the new terms of the concession.

4 THE WITNESS: Yes.

5 THE COURT: Okay. And who did they call into the  
6 office? Who went to that meeting?

7 THE WITNESS: I know for a fact that Mr. Julio  
8 Belmont, who is one of the board members of Lusad, was there.  
9 I know that Mr. Zayas was there. And I don't know who else.

10 THE COURT: Okay. So but there was one representative  
11 of each of the partners. Mr. Belmont was a representative of  
12 Llbero, and Mr. Zayas is a representative of Espiritu Santo.  
13 So in they went and they were given this thing. Okay.

14 THE WITNESS: Correct.

15 THE COURT: All right.

16 BY MR. COOPER:

17 Q. Were you knowledgeable about the altered concession before  
18 it happened or while it was happening?

19 A. No, I was not.

20 Q. Was Mr. Covarrubias knowledgeable about it before or  
21 while --

22 A. No.

23 MR. DUNN: Objection. He can't be a mind reader.

24 THE COURT: The objection is sustained.

25 Q. Did you discuss with Mr. Covarrubias whether he was aware

J5d1espa

Flores - Direct

1 of the altered concession before it was submitted or while it  
2 was being submitted?

3 A. Everybody became aware of that the following day. I'm  
4 afraid that even the persons that were present at that meeting  
5 didn't know for a fact the contents of the document that was  
6 signed. That is my understanding.

7 Q. Do you have any knowledge as to what the value of the  
8 Monterrey concession would be and how much the loss would be if  
9 it was not to go through?

10 MR. DUNN: Objection. Foundation.

11 THE COURT: I'll let him testify.

12 A. I've seen the internal projections made by the company, and  
13 this business could be worth as much as 50 million EBITDA after  
14 one year of full operation, if assuming all 38,000 taxis are  
15 equipped with -- with a digital taxi meter.

16 Q. Okay.

17 MR. COOPER: No further questions, your Honor.

18 THE COURT: Okay. Forgive me. I'm not as familiar  
19 with business practices and government customs in Mexico as I  
20 should be. Is it unusual for a business that has a contract  
21 with the government to have the government call up one day and  
22 say, this is what's happening to our old contract, here's your  
23 new contract?

24 THE WITNESS: It's very unusual.

25 THE COURT: Very unusual.

J5d1lespa

Flores - Cross

1 THE WITNESS: Very unusual, yes.

2 THE COURT: So you were all shocked.

3 THE WITNESS: Yes.

4 THE COURT: Okay.

5 MR. DUNN: Why don't we start there, if I may, your  
6 Honor.

7 CROSS-EXAMINATION

8 BY MR. DUNN:

9 Q. Was there a catalyst to the government's change of position  
10 concerning the concession?

11 A. Was there a catalyst?

12 Q. Yes.

13 A. Is that -- you're asking for my personal opinion --

14 Q. No.

15 A. -- or --

16 Q. Wasn't there an election and a change of administration and  
17 a new administration came in? I'm sorry. That's three  
18 questions.

19 A. Yes.

20 Q. Was there an election?

21 A. Yes.

22 Q. Was there a change of administration?

23 A. Yes.

24 Q. Was there a new mayor?

25 A. Correct. All of that is correct, yes.

J5dlespa

Flores - Cross

1 Q. And it was the new mayor whose administration decided they  
2 didn't want to be bound by the agreement that had been made by  
3 the old administration.

4 A. Not exactly in that manner. You see, in May of 2017, the  
5 former administration issued a mandatory notice to all taxi  
6 drivers for them to convert or to -- to immigrate from the  
7 digital technology -- from the analog technology to the digital  
8 technology. At that point in time, a small group of taxi  
9 drivers filed injunctions, around 400 of them, out of 138,000,  
10 and they -- even though it was a small number comparatively,  
11 they -- they were able to generate a lot of noise and they got,  
12 as they say, in the agenda.

13 So in the political campaign for the mayor of Mexico  
14 City, two candidates, the one that eventually won and another  
15 from another party, they said that if they were to reach the  
16 seat of government of Mexico City, they would not go ahead with  
17 this program, basically because of an argument saying that they  
18 would not be in agreement for -- that a private enterprise will  
19 be profiting from the work of taxi drivers.

20 Q. What's the current status of the concession in Mexico City?

21 A. Well, it's -- it has not begun to operate. Operations have  
22 not begun. Since the new administration took -- took office,  
23 there has been no possibility of implementing operation, as far  
24 as we know.

25 Q. And have any companies you're associated with filed NAFTA

J5d1espa

Flores - Cross

1 claims against the city of Mexico regarding that?

2 A. Yes. Llbero Partners.

3 Q. Llbero Partners.

4 A. Llbero Partners, the one at the very top, the one  
5 controlled by --

6 Q. No. One of the two co-shareholders --

7 A. Yes.

8 Q. -- filed a NAFTA claim?

9 A. Yes.

10 Q. On behalf of whom?

11 A. On behalf of itself and on behalf of Espiritu Santo  
12 Technologies and Llbre Holdings.

13 Q. Okay. So one of the partners, the one controlled by  
14 Mr. Covarrubias, filed a NAFTA claim.

15 A. Correct. And just to point out, it's not the NAFTA claim  
16 per se. It's just a notice of intent.

17 Q. And who authorized that on behalf of the Espiritu Santo  
18 Technologies?

19 A. There was no board of directors resolution authorizing  
20 that. Mr. Covarrubias did it in his capacity as CEO.

21 Q. And who authorized it on behalf of Llbre Holdings, LLC?

22 A. Same case, would be.

23 Q. So there was no consultation with any of the  
24 representatives of Espiritu Santo Holdings, L.P., the other  
25 partner, right?



J5d1espa

Flores - Cross

1 A. The other partner, no. As far as I know, Mr. Covarrubias  
2 is not -- is not -- did not discuss this with his partners.

3 THE COURT: There's no suggestion that -- I mean, now  
4 I understand a lot more about the background of this. There's  
5 certainly no suggestion that Mr. León or Mr. Zayas caused this  
6 to happen.

7 THE WITNESS: No.

8 THE COURT: All right.

9 THE WITNESS: No, no, no. They are not being --

10 THE COURT: They're as disadvantaged by it as you are.

11 THE WITNESS: Yes, they are.

12 The thing is that that claim or that notice of intent  
13 could not be filed on behalf of Espiritu Santo Holdings because  
14 Mr. Covarrubias does not have control or representation of  
15 Espiritu Santo Holdings at the level of partner.

16 BY MR. DUNN:

17 Q. Did he ask?

18 A. I don't know. As far as I know, there was no communication  
19 between them.

20 Q. Isn't it a fact that Mr. Covarrubias just stopped  
21 communicating with either of them, Mr. León or Mr. Zayas,  
22 concerning the management of the companies?

23 A. It is my understanding that happened, yes.

24 Q. Okay. Who are the shareholders of L1bre Jalisco?

25 A. They are two persons. I am not familiar with them. I

J5d1lespa

Flores - Cross

1 don't --

2 Q. Who appointed them to be the shareholders?

3 A. I don't know exactly who appointed them because I don't  
4 know even who they are. What I know is that Llbre Jalisco was  
5 incorporated under the instructions of Mr. Covarrubias because  
6 he wanted to reserve the name Llbre Jalisco for further use.

7 Q. When was that?

8 A. I believe it was May the -- perhaps during the first six  
9 months of 2018. I don't recall the exact date.

10 Q. And he wanted to reserve the use in order to use it to  
11 expand the taxi meter business into Jalisco, right?

12 A. Yeah, that was the intent.

13 Q. This would be an expansion of the existing business of the  
14 company that we've been calling Lusad, right?

15 A. Right, but my understanding --

16 Q. Hold on.

17 A. Right.

18 Q. Yes. Is Lusad a shareholder in Llbre Jalisco?

19 A. Not at the point of incorporation of the company. Since --

20 Q. Today.

21 A. Today, yes, it is. Those individuals have -- my  
22 understanding is that they have already executed a purchase  
23 agreement by means of which Servicios Digitales Lusad would  
24 become a 99 percent holder. I don't have a copy of those  
25 documents, but I was made aware that they were already

J5d1lespa

Flores - Cross

1     executed.

2     Q.   Have any of those documents been made available to Mr. León  
3     or Mr. Zayas?

4     A.   Not yet, but they certainly can -- they can be made  
5     available for their review.

6     Q.   They hadn't been told at all that that was happening?

7             THE COURT:   Because nobody's talking to them, right?

8             THE WITNESS:   Right.   The partners are not talking, so  
9     it's kind of difficult.

10    Q.   The notary public who created Llbre Jalisco is located in  
11    Jalisco, is that right?

12    A.   Right.

13    Q.   And I'm going to mispronounce his name.   His name is  
14    Rodolfo Ramos Menchaca?

15    A.   Yes.

16    Q.   Is he the same notary public who created --

17    A.   Llbre Nuevo León.

18    Q.   Yes.

19    A.   Yes.

20    Q.   Who chose him to do that?

21    A.   Mr. Covarrubias did.

22    Q.   Okay.   So Mr. Covarrubias set up Llbre Jalisco without  
23    telling Mr. Zayas or Mr. León, right?

24    A.   Yes.

25    Q.   To preserve the name to expand the business of Lusad

J5d1espa

Flores - Cross

1 without involving them or telling them about it, right?

2 A. I don't know without telling them, because at the point --

3 Q. As far as you're aware, nobody ever told them about Llibre  
4 Jalisco, right?

5 A. As far as I know, that's correct.

6 Q. Okay. And then Mr. -- who selected the notary in Jalisco  
7 to set up the Monterrey company?

8 A. Mr. Covarrubias did.

9 Q. So Monterrey -- my geography of Mexico is not wonderful,  
10 but I think Jalisco is near Guadalajara, right?

11 A. Correct.

12 Q. Monterrey is nowhere near that, right?

13 A. Correct.

14 Q. But Mr. Covarrubias chose the same notary who had set up  
15 the separate company for Jalisco to set up the Monterrey  
16 company, is that right?

17 A. Right.

18 Q. And that was his choice --

19 A. Yes.

20 Q. -- is that right? And there are no board members on any of  
21 those companies representing any of the Espiritu Santo Holdings  
22 interest, is that right?

23 A. Right.

24 Q. And the partners agreement, which you're fully familiar  
25 with, requires that all of those companies have directorships

J5dlespa

Flores - Cross

1 in which the individuals mirror the holdings of the parent  
2 company, is that right?

3 A. Right.

4 Q. And that didn't happen.

5 A. Right.

6 Q. Were you aware that was not happening at the time?

7 A. Not at the time. Afterwards, I became aware of that.

8 Q. When you became aware of it, did you tell Mr. Covarrubias  
9 that he was violating the partners agreement?

10 A. Not in that words. I said this is something that --

11 Q. In substance, did you tell him --

12 THE COURT: Let him finish, Mr. Dunn.

13 MR. DUNN: I apologize. I apologize.

14 THE COURT: Please. The man has come all the way from  
15 Mexico. Let him finish.

16 Q. I'm sorry. Do you need the first part of your answer back?

17 THE COURT: No.

18 Q. Go ahead.

19 THE COURT: What did you tell Mr. Covarrubias?

20 THE WITNESS: That there is disparity between what the  
21 incorporation documents of the company and what is stated in  
22 the partners agreement.

23 Q. When did you tell him that?

24 A. I don't recall the exact date.

25 Q. Month?

J5d1espa

Flores - Cross

1 A. Days, perhaps.

2 Q. Days ago?

3 A. Days, perhaps. Days after.

4 Q. Days after what?

5 A. Days after the documents were executed.

6 Q. So that was in January of 2018? 2019?

7 A. 2019, yes. It was February, because they were executed on  
8 January 31st.

9 Q. And in the four months since then, nothing has been done to  
10 correct that error, is that right?

11 A. Right.

12 Q. Did you attend the board meeting on December 14th of 2018?

13 A. Yes, I did.

14 Q. And were there certain resolutions passed at that board  
15 meeting?

16 A. Yes.

17 Q. Did you act as the secretary for that purpose?

18 A. No, I didn't, because I --

19 Q. Who did?

20 A. Mr. Rodrigo Nuñez.

21 Q. Did you review those resolutions?

22 A. Yes, I did.

23 Q. Are those resolutions valid and binding?

24 A. Yes, they are.

25 Q. Have you ever asserted they were not valid and binding in

J5d1espa

Flores - Cross

1 any written document?

2 A. That they are not valid in any recent document?

3 Q. Yes.

4 A. No, I don't believe I have.

5 Q. Okay. Are you familiar with a criminal complaint that has  
6 been filed against Mr. León and Mr. Zayas?

7 A. Yes, I am generally aware. Those are being handled by  
8 outside counsel.

9 THE COURT: Do you need a minute?

10 MR. DUNN: I've got it. I'm sorry. I've got it.

11 Q. Okay. Let me show you Exhibit 3 to the stricken  
12 declaration of Mr. Eduardo Amerena.

13 MR. DUNN: May I approach.

14 Your Honor, may I approach.

15 THE COURT: Yes. You wouldn't mind if I saw a copy?

16 MR. DUNN: It should be there.

17 MR. COOPER: What exhibit number is this?

18 MR. LORENZO: Exhibit 3 to the Amerena declaration.

19 BY MR. DUNN:

20 Q. On the very first page of this document, does it say that  
21 you swore out this statement as legal representative of Lusad?

22 A. Yes, that is my name on the top.

23 Q. I'm not asking -- okay. And did you do that?

24 A. Yes.

25 Q. I thought you just told me this was done by outside counsel

J5d1espa

Flores - Cross

1 and not by you.

2 A. Well, the document is being handled by outside counsel. I  
3 signed this document as legal representative of Servicios  
4 Digitales Lusad. It was prepared by outside counsel. That's  
5 what I meant.

6 THE COURT: I assume you reviewed it before you swore  
7 it out.

8 THE WITNESS: Yes.

9 THE COURT: Very serious matter, swearing out a  
10 criminal complaint.

11 THE WITNESS: Yes.

12 BY MR. DUNN:

13 Q. And does this allege, does this criminal complaint allege  
14 that the resolutions of December 14th are invalid because they  
15 were not signed unanimously?

16 THE COURT: They were not signed by all four.

17 MR. DUNN: Correct.

18 A. It is different --

19 THE COURT: No, no. Is that what it alleges?

20 THE WITNESS: It says that the document was not signed  
21 by all four members.

22 THE COURT: Yes. Okay.

23 THE WITNESS: However, the resolutions were discussed  
24 and approved during the meeting. The fact that the document  
25 was not signed by all of them does not make them invalid. The



J5d1espa

Flores - Cross

1 resolutions are --

2 THE COURT: It's your position they were discussed,  
3 they were approved, they're therefore valid. And we've already  
4 established that they were signed by one director for each  
5 side.

6 THE WITNESS: Correct. Correct.

7 THE COURT: Or one member of the board of managers, I  
8 guess is what you call the board.

9 THE WITNESS: Correct.

10 THE COURT: And so what's the defect?

11 THE WITNESS: That --

12 THE COURT: What's the crime? What's the crime that's  
13 been committed?

14 THE WITNESS: In this document, if I recall correctly,  
15 an allegation of possible procedural fraud is being --

16 THE COURT: Well, I'm looking at a page. It's page 4.  
17 I'm looking at the English translation. It says, "It's  
18 important to note, in order to finish the section on  
19 precedence, that the resolutions passed and adopted by the  
20 board of managers are and must be unanimous." Now it's my  
21 understanding from your testimony that that was unanimously  
22 passed. All four of them voted in favor of it, right?

23 THE WITNESS: Yes.

24 THE COURT: Okay. So it would be a lie to say that it  
25 wasn't passed unanimously.

J5d1lespa

Flores - Cross

1 THE WITNESS: Mm-hmm.

2 THE COURT: Okay. Then it says, "That is why the  
3 signatures of everyone are required; otherwise, the resolutions  
4 cannot take effect and are considered null and void." Is that  
5 your position, that these resolutions are null and void? Yes  
6 or no?

7 THE WITNESS: No.

8 THE COURT: No, it's not.

9 Okay. Next question.

10 BY MR. DUNN:

11 Q. Did you sign this document to swear that that was the  
12 position of the company?

13 A. No. I signed this document saying it is my appreciation --

14 Q. Okay. So this document is wrong. As you sit here today,  
15 under oath, you are swearing that this document, where it says  
16 those resolutions are null and void, is incorrect, is that  
17 right?

18 A. No, because -- the context of what is being described here  
19 is as follows. Can I explain?

20 Q. Go ahead.

21 THE COURT: Oh, go right ahead.

22 A. Okay. On December 14th, only two originals were executed  
23 by Mr. León and Mr. Belmont. One remained in the custody of  
24 the secretary of the board, Rodrigo Nuñez, and the other  
25 remains in the custody of -- of mine.

J5d1espa

Flores - Cross

1 THE COURT: Yes, okay. So what?

2 THE WITNESS: Okay. On December 18th, when filing for  
3 the criminal -- criminal complaint was filed because of the  
4 stealing of the laptop computers. That was filed on  
5 December 18th.

6 On December the 28th, Mr. Zayas went to the Attorney  
7 General's Office and granted a pardon to Mr. Herrera, and when  
8 he granted that pardon, he -- he presented a copy of the board  
9 of directors minutes signed by him as well as Mr. Belmont and  
10 Mr. León. Do you follow me, so far?

11 THE COURT: That in addition, when he went to the  
12 Attorney General's Office, he showed the Attorney General a  
13 copy that was -- we all admit that everything was passed, as  
14 they say, all in favor, aye, everybody said yes.

15 THE WITNESS: Yes.

16 THE COURT: The copies I have are signed by Mr. León  
17 and Mr. Belmont, but he gave the Attorney General a copy that  
18 was signed by Mr. León and Mr. Belmont and Mr. Zayas.

19 THE WITNESS: Correct.

20 THE COURT: Didn't purport to have signed  
21 Mr. Covarrubias's name.

22 THE WITNESS: No, he didn't.

23 THE COURT: No. Okay.

24 THE WITNESS: But on December 18th, this document was  
25 presented to Attorney General's Office, so a claim was made

J5d1lespa

Flores - Cross

1 that that signature, the signature of Mr. Zayas, was made on a  
2 photocopy, not on the original, because there were only two  
3 originals, one of them in the custody of one person, the other  
4 one in my custody. So --

5 THE COURT: Okay. But what you're saying is that  
6 everybody agrees the board adopted the resolution, it adopted  
7 the resolution unanimously, and because Mr. Zayas signed a  
8 photocopy, which is the wrong copy, he committed a crime and it  
9 became null and void? Is that what you're saying?

10 THE WITNESS: No, no, no. What we're saying is that  
11 he presented --

12 THE COURT: But you said to me, you said to me that  
13 the resolutions are not null and void. You said those words to  
14 me. I wrote them down. She wrote them down. I'll bet we  
15 wrote them the same way. The resolutions are not null and  
16 void. But this says the resolutions are null and void. Those  
17 are inconsistent statements. Which one is correct? Just pick  
18 one. Which one is correct? Are they null and void or aren't  
19 they null and void?

20 THE WITNESS: The resolutions were adopted at the  
21 meeting.

22 THE COURT: They were adopted. Thank you.

23 Can I take one minute. Excuse me. I just -- they  
24 were adopted. Okay.

25 MR. DUNN: Can we take five minutes, your Honor?

J5d1lespa

Flores - Cross

1 THE COURT: Sure. Take five.

2 (Recess)

3 (In open court)

4 BY MR. DUNN:

5 Q. Sir, the context for this criminal declaration that you  
6 swore and the allegation that was made about the board minutes  
7 was with respect to a criminal complaint that an employee of  
8 Lusad had committed a crime by taking laptops containing  
9 financial information and giving those laptops to Deloitte, is  
10 that right?

11 A. Right.

12 Q. And there's no dispute those laptops were given by an  
13 employee of Lusad to Deloitte. There's no dispute about that,  
14 that they went to Deloitte, right?

15 A. They -- they are with Deloitte, yes, as far as we know,  
16 yes.

17 Q. And Deloitte was the auditor that was approved unanimously  
18 in the resolutions on December 14th to conduct the internal  
19 investigation, right?

20 A. Right, but --

21 THE COURT: No, there's no "but." There's no "but."  
22 No "but."

23 Q. Afterwards --

24 THE COURT: Right.

25 Q. -- Mr. Covarrubias, on his own, without the approval of the

J5d1espa

Flores - Cross

1 directors, terminated that engagement, is that right?

2 A. I don't know about the -- that specific action taken by  
3 Mr. Covarrubias.

4 Q. You don't know that Deloitte has been terminated?

5 A. Not terminated.

6 Q. Are they doing the investigation?

7 A. No, they are not. In fact, they didn't began to perform  
8 the investigation.

9 Q. Because of the filing of the criminal complaint, isn't that  
10 right?

11 A. Because of the filing of the criminal complaint, correct.

12 Q. Now did you have involvement in a civil action in the state  
13 court in Mexico that was filed on April 24, 2019?

14 A. Do I have involvement?

15 Q. Yes. Do you have knowledge of that?

16 A. Yes, I have general knowledge of that, yes.

17 Q. What is your source of knowledge of that proceeding?

18 A. Because I have been informed by the external counsel  
19 handling it.

20 Q. And is that José Garcia Granados Torres?

21 A. He's a legal representative for one of the parties, the one  
22 bringing on the lawsuit. But that's --

23 Q. So Mr. Cooper asked you some questions about the positions  
24 you hold, and I think you said you were the internal counsel  
25 for Servicios Digitales Lusad, is that right?

J5d1espa

Flores - Cross

1 A. Right.

2 Q. Do you hold any position with Llbre holding LLC?

3 A. No, I do not.

4 Q. Do you hold any position with Espiritu Santo Technologies,  
5 the Delaware partnership?

6 A. No, I do not.

7 Q. Okay. Do you know Mr. Garcia Granados Torres?

8 A. I know him, yes.

9 Q. Who is he?

10 A. He's an associate of Mr. Covarrubias.

11 Q. He's an associate of Mr. Covarrubias. Does he have any  
12 position with any of the companies that are on the chart?

13 A. I don't believe that he is a direct employee of those  
14 companies. He works for -- with Mr. Covarrubias in other  
15 ventures.

16 Q. And did somebody appoint him as the legal representative of  
17 Llbre Holding, LLC?

18 A. I believe it was Mr. Covarrubias in his capacity of CEO of  
19 Llbre Holding who appointed him.

20 Q. And was there any discussion with Mr. León or Mr. Zayas  
21 about that?

22 A. Not on my part, no, I was not involved in that.

23 Q. Do you know of any discussion?

24 A. No, I do not.

25 Q. And Mr. Garcia Granados Torres was appointed by

J5d1espa

Flores - Cross

1 Mr. Covarrubias to bring a lawsuit on behalf of L1bre Holding,  
2 is that right?

3 A. Yes.

4 Q. The lawsuit on behalf of L1bre Holding was brought in  
5 Mexico, is that right?

6 A. Right.

7 Q. And it was brought -- L1bre Holding is a Delaware  
8 corporation.

9 A. Right.

10 Q. Are you familiar with the injunction that was sought in  
11 that proceeding?

12 A. Yes, generally familiar, yes.

13 Q. Let me see if I can refresh your recollection.

14 MR. DUNN: May I approach, your Honor.

15 THE COURT: You may.

16 Q. Have you seen that document before?

17 A. Yes.

18 MR. COOPER: I think the Spanish version is -- can I  
19 get a copy of it.

20 (Counsel conferring)

21 Q. Have you seen that document before?

22 A. Yes, in the Spanish version.

23 Q. Can you identify it for the record, please.

24 A. Yeah. It is an injunction issued by the competent court in  
25 Mexico City on April 21st -- 24th, 2019.



J5d1espa

Flores - Cross

1 Q. This is an injunction issued in Mexico at the request of a  
2 Delaware company, is that right?

3 A. Correct.

4 Q. By an associate acting -- by an associate of  
5 Mr. Covarrubias, is that right?

6 A. Yeah, who --

7 Q. Who was designated by Mr. Covarrubias to do that, is that  
8 right?

9 A. Yes.

10 Q. Okay. And who is this injunction against?

11 A. Against Llbre Holding or -- no, I'm sorry. Against the  
12 partners in Espiritu Santo Technologies, Llbero Partners, and  
13 Espiritu Santo Holdings.

14 Q. And against anybody else?

15 A. I don't recall.

16 Q. It's against Espiritu Santo Technologies, is it not, the  
17 parent of Llbre Holdings?

18 A. Mm-hmm.

19 Q. Is that a yes?

20 A. Perhaps, yes.

21 Q. Well, I don't want -- I want to know whether it's  
22 against -- so this is Mr. Covarrubias, on behalf of Llbre  
23 Holdings, the Delaware partnership that's the parent of Lusad,  
24 getting an injunction in Mexico against its parent and its  
25 parent's partners, is that right?

J5d1lespa

Flores - Cross

1 A. Well, it's -- it's the company.

2 THE COURT: Yes, it is. That's right. Yes, correct.  
3 Move on.

4 Q. And what is it that's being enjoined here?

5 A. The possibility of starting an arbitration procedure in the  
6 United States by the partners in Espiritu Santo Technologies.

7 Q. And when did you first become aware of this injunction?

8 A. Perhaps the day after it was issued, April 25th.

9 Q. Do you have a copy of the complaint that led to this  
10 injunction?

11 A. I don't have it with me.

12 Q. Do you know, was it ever served on any of the defendants?

13 A. I do not know.

14 Q. As far as you know, it's never been served, is that right?

15 A. I don't know if it was served.

16 Q. And when you saw -- you testified that you're familiar with  
17 the partners agreement, is that right?

18 A. Yes.

19 Q. And do you know that the partners agreement vests  
20 jurisdiction with this court in connection with prearbitral  
21 injunction matters?

22 A. Yes.

23 Q. You're fully aware of that, right?

24 A. Yes.

25 Q. And you were aware of that on April 30th of this year when

J5d1espa

Flores - Cross

1 you first saw this injunction, were you not?

2 A. Yes.

3 THE COURT: I think he said he first saw it on  
4 April 25th.

5 BY MR. DUNN:

6 Q. Okay. When you saw that and saw that L1bre Holdings, a  
7 Delaware company, had gotten an injunction in Mexico to enjoin  
8 arbitration in the United States, did you mention to anybody in  
9 the company that this was a violation of the partners  
10 agreement?

11 A. No, because I think it is relevant to point out the nature  
12 of the lawsuit in the first place, the lawsuit --

13 Q. Do you know --

14 MR. COOPER: Your Honor, let him finish the answer.

15 THE COURT: The answer was no, he didn't say anything  
16 to anybody. That's the answer to the question.

17 Next question.

18 Q. And you were aware at that time when you didn't mention  
19 that subject that this was a violation of the partners  
20 agreement to even bring such a lawsuit and derogate the  
21 jurisdiction of this court, were you not?

22 A. Because L1bre Holding is not a part of --

23 Q. Yes or no, please. Yes or no.

24 A. No.

25 Q. Were you aware that this court has exclusive jurisdiction

J5d1lespa

Flores - Redirect

1 over prearbitral injunctions?

2 MR. COOPER: Objection to form.

3 A. Yes, for the partners.

4 THE COURT: Okay. This is what we're going to get  
5 into with this hypertechnicality and the broad arbitration  
6 clause, and I already know all that stuff, and I don't need him  
7 to testify about it. I don't even need you guys to talk about  
8 it. I know everything there is to know about that subject.

9 MR. DUNN: In that case, your Honor, I have no further  
10 questions.

11 THE COURT: Great.

12 REDIRECT EXAMINATION

13 BY MR. COOPER:

14 Q. Mr. Flores, I just want to go back to the accusations that  
15 were made in the criminal indictment regarding the board  
16 minutes.

17 A. Yes.

18 Q. You indicated that there was a forged document that was the  
19 basis of that claim. What was the forged document?

20 A. The December 14th minutes of the board of managers of -- of  
21 Digitales Lusad.

22 Q. And how was it forged?

23 A. Because the day of the meeting, only two originals were  
24 executed. One was in the possession of the secretary of the  
25 board, the other one was in my possession. And on December the

J5d1lespa

Flores - Redirect

1 28th, when Mr. Zayas attempted to grant a pardon to the person  
2 who stole the computers, he presented a copy of those same  
3 minutes with his signature on it as well as Mr. León and  
4 Mr. Belmont. Now it has been asserted that that signature was  
5 made on a photocopy of the document; thus, meaning that those  
6 minutes were altered. So --

7 THE COURT: Wait a minute. Wait a minute. Wait. A  
8 photocopy doesn't alter something.

9 THE WITNESS: No.

10 THE COURT: Can you point to any difference in the  
11 text --

12 THE WITNESS: No, the text --

13 THE COURT: No, no, no, no, no, no. Can you point to  
14 any difference in the text between the minutes that were signed  
15 by the two people, the one that you have the copy of, and the  
16 minutes that were given to the Attorney General? Any word?  
17 Can you point to one word?

18 THE WITNESS: No.

19 THE COURT: Was there a single word changed?

20 THE WITNESS: It was the exact same minutes.

21 THE COURT: Exact same minutes. Okay.

22 BY MR. COOPER:

23 Q. Were the signatures exactly the same --

24 THE COURT: Oh, I get that. Yes, he added his name to  
25 a photocopy, a precise photocopy. Let me tell you how

J5d1lespa

Flores - Redirect

1 unimpressed I am with this.

2 Q. Is that a breach of the law, to submit a forged document,  
3 under Mexican law?

4 A. For Mexican law purposes, it is considered a forged  
5 document, yes.

6 Q. Was there also an injunction against Mr. Zayas and Mr. León  
7 participating in Lusad's activities?

8 A. Yes. But that was issued by a civil court in a different  
9 proceeding.

10 Q. And when was that issued?

11 MR. DUNN: Exceeding the scope, your Honor.

12 THE COURT: It's beyond the scope.

13 Q. You were asked about Llbre Jalisco. Have they had any  
14 operations or conducted any business affairs at all?

15 THE COURT: You know what? To hell with it. Go ahead  
16 and ask him.

17 A. No, nothing. Llbre Jalisco has not operated --

18 THE COURT: If you want to ask him about the civil  
19 injunction, go ahead.

20 Q. Was there a civil injunction?

21 A. Yes, there was.

22 Q. And what court rendered it?

23 A. I believe it was a civil court in Mexico City.

24 Q. Did it concern the affairs of Jalisco -- I'm sorry -- of  
25 Lusad?

J5d1lespa

Flores - Redirect

1 A. Servicios Digitales Lusad, yes.

2 Q. Is Lusad a Mexican company under Mexican law?

3 A. Yes, it is.

4 Q. Would that have prevented Mr. León and Mr. Zayas from  
5 participating in new bids based on Lusad technology?

6 MR. DUNN: Your Honor, this now is substantive  
7 leading. I'm okay to have the testimony, but could we have it  
8 from the witness, please.

9 THE COURT: Correct. You can ask him open-ended  
10 questions that do not contain the answer.

11 Q. What is the effect, if you know, of that injunction on the  
12 Monterrey concession and the ability of Mr. León and Mr. Zayas  
13 to participate in that?

14 A. Well, the injunction refers to the -- basically what it is  
15 saying is that they are barred from performing any -- any  
16 activities as members of the board of directors of Servicios  
17 Digitales Lusad.

18 THE COURT: So what? What's the effect on the  
19 Monterrey bid?

20 THE WITNESS: None.

21 Q. Is this the Monterrey -- is the technology being used in  
22 the Monterrey bid possessed by Lusad?

23 A. Yes.

24 Q. Owned by Lusad?

25 A. It is. It will be the technology owned by Lusad.

J5d1espa

Flores - Redirect

1 Q. So they would have to license or extend the IP ownership  
2 that they have to another entity to make the bid, correct?

3 A. To Nuevo León, yes, to Llbre Nuevo León.

4 Q. Do you have an understanding of whether or not Lusad can  
5 continue as an ongoing entity and whether the parties should  
6 continue as an ongoing entity if the bid does not happen?

7 MR. DUNN: Objection. Both scope and leading.

8 THE COURT: Overruled.

9 A. What I know is that in order for the company to survive,  
10 income has to be generated, and right now the only possibility  
11 of generating income is through obtainment of concessions. The  
12 concession in Mexico City is in trouble right now, and the  
13 other real possibility in the short term is Monterrey.  
14 That's -- that's why Monterrey is considered critical for the  
15 survival of the business.

16 THE COURT: And this is because the Mexico City  
17 concession is in trouble because of the results of the  
18 election --

19 THE WITNESS: Correct.

20 THE COURT: -- and change of political landscape.  
21 Okay.

22 BY MR. COOPER:

23 Q. If there is no registration done on Wednesday, what would  
24 be the impact on the ability to bid?

25 A. Llbre Nuevo León will not be able to participate in the



J5d1espa

Flores - Recross

1 eventual bidding process, so the possibility of obtaining that  
2 concession would be lost.

3 Q. And could that possibly result in the bankruptcy of Lusad?

4 A. Most likely, yes, because not a single dollar has been  
5 earned so far because of the operation of the company.

6 MR. COOPER: No further questions, your Honor.

7 THE COURT: Okay. Is there anything else?

8 MR. DUNN: I just have two questions about this other  
9 injunction.

10 THE COURT: Okay.

11 RECROSS EXAMINATION

12 BY MR. DUNN:

13 Q. That other injunction was an injunction sought by Lusad to  
14 stop Mr. Zayas and Mr. León from acting as directors, is that  
15 right?

16 A. Yes.

17 Q. And their right to act as directors is specifically  
18 provided for and preserved in the partners agreement, is it  
19 not?

20 MR. COOPER: Objection to form.

21 THE COURT: Overruled.

22 A. Not in -- not in the Mexican companies, as far as I  
23 understand.

24 Q. Doesn't the partners agreement require that in the  
25 downstream companies, the directorships have to mirror the

J5d1espa

parent company?

A. Yes, but --

MR. DUNN: No further questions.

THE COURT: "Yes, but," and there aren't any "buts" because there aren't any exceptions. All of them, every single one, regardless of where they are incorporated.

MR. COOPER: I hear you, your Honor.

May I ask a follow-up question.

REDIRECT EXAMINATION

BY MR. COOPER:

Q. Is the partnership agreement the governing document for Lusad?

A. No, it's not.

Q. What is the governing document for Lusad?

A. It's bylaws and incorporation documents.

Q. And they call for what application of what law?

A. Under Mexican law.

MR. COOPER: Thank you.

THE COURT: You may step down.

(Witness excused)

THE COURT: Okay. And I thank you very much, because I know you didn't come here to testify today, and I really appreciate it.

THE WITNESS: Thank you. Okay.

THE COURT: Okay. Mr. Cooper, anything else from you?

J5d1lespa

1 MR. COOPER: I have legal argument, your Honor, but I  
2 have no further witnesses.

3 THE COURT: All right. So Mr. Dunn, this is your  
4 motion, so you can argue first.

5 MR. DUNN: May I stay here or do you want me to use  
6 the podium?

7 THE COURT: You can do whatever you want.

8 MR. DUNN: Your Honor, I'm going to be very brief  
9 because I think we've laid it out in our papers and I think the  
10 situation is quite clear. I think there is a fair amount of  
11 confusion. I think the injunction --

12 THE COURT: Wait a minute. That is the most  
13 ridiculous thing. We were young lawyers together, like 40  
14 years ago, a long time ago. Very long time ago.

15 MR. DUNN: I was hoping you wouldn't mention how long  
16 ago it was.

17 THE COURT: It was a long time ago. And that is the  
18 dumbest thing you ever said. I mean, you just said that "we've  
19 laid it out in our papers very clearly. There's a fair amount  
20 of confusion."

21 MR. DUNN: Being generated by the respondent here, as  
22 to what is and isn't being requested and what the basis for the  
23 relief is.

24 First of all, if it is the case that the Monterrey  
25 entity, Nuevo León, is in fact a subsidiary of Lusad and if it

J5d1lespa

1 in fact is owned by Lusad and if its existence and operations  
2 are in compliance with the partnership agreement --

3 THE COURT: Which is to say if it has two board  
4 members appointed by your people and all that jazz --

5 MR. DUNN: Then there's no problem.

6 THE COURT: -- no problem. I would be really happy to  
7 enter an injunction that says, as long as you've got a properly  
8 constituted subsidiary called Nuevo León that complies in every  
9 particular with Section 5.1(b) of the partnership agreement, go  
10 ahead and bid.

11 MR. DUNN: Absolutely, and we'd be happy to see that  
12 happen, and we'd be happy to see that bid won, because we would  
13 like the technology to be used on behalf of Lusad for the  
14 benefit of the owners of Lusad and ultimately the owners of its  
15 parent companies. And that would not, if there was compliance,  
16 be prohibited by the existing injunction and by the injunction  
17 we've requested. So I think this is very much a strawman  
18 that's being generated here in terms of the threat posed by the  
19 injunction.

20 THE COURT: Right. Okay.

21 MR. DUNN: I think it is clear that there is a  
22 likelihood of success on the merits, and I think your Honor  
23 pointed out that the issue is whether we're going to have  
24 success on the merits of the arbitration on the breach of  
25 contract claim, because that's the underlying point that an

J5d1lespa

1 injunction is necessary in order to preserve the status quo so  
2 as to allow appropriate relief in the arbitration itself on the  
3 claims that have been made in the arbitration.

4 I'm not going to summarize the testimony now. Your  
5 Honor has been very patient. We have a record. I think you  
6 understand clearly that we have alleged in our papers and we  
7 have demonstrated today that there are numerous breaches of the  
8 partners agreement, and even if it were true, as the witness  
9 said at the very end, that Lusad is governed by the laws of  
10 Mexico and its bylaws, the fact of the matter is, the partners  
11 made an agreement, which is binding, subject to Delaware law,  
12 between the partners that says they promise, when they set up  
13 subsidiary entities, they will have the mirror image --

14 THE COURT: They set them up under the law of Tunisia.

15 MR. DUNN: Correct. So it doesn't matter. And it has  
16 never been suggested, and there is no testimony whatsoever or  
17 any evidence to suggest that it is illegal or improper in any  
18 way for Lusad or any other subsidiary Mexican companies to have  
19 the same directors structure as the other entities, as was  
20 agreed to.

21 THE COURT: Right.

22 MR. DUNN: And if they then go and get an injunction  
23 such that he --

24 THE COURT: I think Mr. Covarrubias is a big boy.  
25 He's like a big major businessman in Mexico, is that not

J5d1lespa

1 correct?

2 MR. DUNN: In making investments involving many  
3 millions of dollars, and he has numerous businesses.

4 THE COURT: Okay. Very sophisticated businessman.

5 MR. DUNN: Right.

6 THE COURT: So if he didn't want to be bound by  
7 Delaware law in setting up subsidiary corporations to make bids  
8 on the taxi business, he didn't have to sign that agreement.  
9 He didn't have to strike that deal.

10 MR. DUNN: And he didn't invest a single nickel in the  
11 business until after he did. And by the same token, he signed  
12 an agreement that disputes, with respect to that partners  
13 agreement, which he executed, would be resolved in arbitration  
14 and that this court exclusively would have jurisdiction over  
15 preliminary injunctive relief in aid of arbitration. And  
16 then --

17 THE COURT: Well, he would come back at you and say --  
18 Mr. Covarrubias would come back at you and say, but I didn't  
19 get an injunction in Mexico in aid of arbitration; I got an  
20 injunction in Mexico in derogation of arbitration --

21 MR. DUNN: Well --

22 THE COURT: -- by arguing that this dispute involves  
23 Lusad, and Lusad isn't a party to the arbitration agreement so  
24 it's not bound, and there's no way to read this extraordinarily  
25 broad arbitration clause as encompassing disputes between the

J5d1lespa

1 partners about Lusad, which is obviously absolutely ridiculous.

2 MR. DUNN: The plaintiff that got that injunction is  
3 not Lusad. The plaintiff that got that injunction is  
4 actually --

5 THE COURT: Is a Delaware --

6 MR. DUNN: Is a Delaware corporation. It is the  
7 second-tier entity, not the third-tier entity.

8 THE COURT: Right.

9 MR. DUNN: And it got -- it sought that -- not only  
10 did it derogate this court's jurisdiction by doing that --

11 THE COURT: I'm not insulted, but --

12 MR. DUNN: It's not a question of whether you're  
13 insulted, your Honor --

14 THE COURT: I know.

15 MR. DUNN: -- it's a question of whether they violated  
16 the agreement.

17 THE COURT: Yes, of course they did. Of course they  
18 did.

19 MR. DUNN: Then I have nothing further to say, because  
20 they also did it without the consent of the directors of  
21 Llbero, who that certainly was a major action for Llbero to  
22 take to say, you can't bring an arbitration to resolve this  
23 dispute between the partners, and nobody even pretends to argue  
24 that there was consent sought, or even notice, and we still  
25 don't even have copies of all of these documents, and these

J5d1lespa

1 injunctions have never been served.

2 I think I'm going to stop there, your Honor, and just  
3 point out that I think as to irreparable harm, I think the  
4 potential here for --

5 THE COURT: I think that's what the real argument is  
6 here is irreparable harm.

7 MR. DUNN: And I think, your Honor, that where there  
8 is a serious threat of competition in violation of a  
9 noncompetition clause and where there is a threat of use of  
10 intellectual property -- and now we're being told, very hurry  
11 up, oh, we didn't tell you about it, you didn't know about it,  
12 but Nuevo León is actually going to be a Lusad company. But  
13 Jalisco is not a Lusad company, and Llbre Jalisco uses the  
14 trademark of Llbre, which is a protected trademark and is the  
15 property of Lusad, which is one of the entities of the  
16 partnership, and that I think alone is sufficient basis for the  
17 injunction where, as here, the contract prohibits competition  
18 by any of the partners outside of the partnership structure,  
19 requires a mirror image structuring that is not being followed,  
20 and where there is intellectual property that obviously was  
21 developed before Mr. Covarrubias or Mr. Salinas had anything to  
22 do with the company by Null, and there is a serious threat that  
23 absent the injunction, that that intellectual property will be  
24 misused, and it would be very hard, if not impossible, to value  
25 that intellectual property under the circumstances.



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1           And if Llbre Nuevo León is in fact a Lusad entity and  
2 behaves properly and the franchise is sought or obtained on  
3 behalf of the partnership entities, there won't be any  
4 violation and there won't be any problem.

5           So I think there is a serious threat here that it's  
6 never been explained why Jalisco was formed, it's not explained  
7 why Jalisco has not been moved into the partnership structure,  
8 as was supposed to have happened, and it seems to me that there  
9 is a substantial showing --

10           THE COURT: Hasn't been explained to me that Nuevo  
11 León has been moved into the partnership structure. I mean, I  
12 see it on the chart, but I haven't seen any executed documents.  
13 I haven't seen the board members have been appointed by ESH. I  
14 haven't seen any indication that, although Mr. Cooper protests  
15 that Nuevo León is a Llbre company, that's under the  
16 umbrella -- it's sitting under the umbrella on this cute little  
17 chart, but I certainly haven't seen any evidence that that has  
18 actually taken place, and that all of the terms and conditions  
19 that are applicable under the partnership agreement have been  
20 complied with.

21           MR. DUNN: Well, and we know that the directors have  
22 been frozen out of Lusad, we know they've been frozen out of  
23 Llbre Holdings because their interests are being disregarded,  
24 and Mr. Covarrubias has just gone on and taken over these  
25 companies, and that is a breach of contract, and theoretically

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1 there could be damages for that, but I think these breaches are  
2 so pervasive and so massive, and it is obvious that there is a  
3 plan to isolate and remove our partners, the petitioners here,  
4 from any operation and from having information or knowledge  
5 concerning these businesses, and I would suggest under those  
6 circumstances that there is a very real threat of irreparable  
7 harm because we cannot know what these people are doing and we  
8 cannot know how they are using information, and they have made  
9 clear their ability and willingness to go repeatedly to the  
10 Mexican court in violation of their obligations under the  
11 partners agreement.

12 THE COURT: And without notice. Without notice.

13 MR. DUNN: Without any notice and without even  
14 service.

15 THE COURT: I mean, there's clearly been a problem.  
16 No notice, no opportunity to be heard.

17 MR. DUNN: So let me stop there, your Honor.

18 THE COURT: Okay. Mr. Cooper, I assume that  
19 irreparable harm is where you are.

20 MR. COOPER: Yes. Well, your Honor, it is where we  
21 are, and I think it's, you know, it's the first thing that  
22 courts look at, as you well know. And I think two major points  
23 have to be made here.

24 One is, where's the irreparable harm if there's a  
25 breach of the agreement? It can be remedied with damages. The

J5d1lespa

1 irreparable harm will result if this doesn't happen. If this  
2 doesn't happen, everyone is going to lose, and you're going to  
3 run the risk that this company is going to end up in  
4 bankruptcy. To me it makes no sense why my adversary would be  
5 pushing to not have this bid go forward and lose this  
6 opportunity and run the risk the company is going to go and  
7 become insolvent. More so, we cited --

8 THE COURT: All they would have to do to satisfy me is  
9 show me that they have actually given ESH the opportunity to  
10 appoint the two directors, brought it under the corporate  
11 umbrella, sign an undertaking that Mr. Covarrubias is going to  
12 comply with the terms of the partnership agreement, and I'll  
13 say, fine, go right ahead, bid.

14 MR. COOPER: Okay. Well --

15 THE COURT: What? What? Why would I want to do that?

16 MR. COOPER: No, your Honor, I'm not saying that at  
17 all. I'm not saying that at all. And I think we showed you --  
18 I don't think it's in dispute, truly, that the articles of  
19 incorporation show that they have an interest in this.  
20 Mr. León didn't dispute it. I showed the articles of  
21 incorporation. I don't know why they wouldn't be acceptable.  
22 We had a witness who has knowledge of them presented. So the  
23 ownership is not the issue, your Honor.

24 THE COURT: Well, just let me make a suggestion to  
25 you. Show me documents that purport to be articles of

J5d1lespa

1 incorporation that on their face do not comport with the terms  
2 of the partnership agreement. Our excellent Mexican counsel  
3 admits very straightforwardly that there are no directors on  
4 this board. It has no representation whatsoever on this board  
5 for the Espiritu Santo side of this partnership. And that  
6 they're relying, therefore, on the goodwill of a man who,  
7 frankly, all the evidence shows, doesn't deal very much  
8 goodwill toward them. Not talking to his partners, not --

9 MR. COOPER: Your Honor --

10 THE COURT: That's unfortunate, says Mr. Flores.  
11 That's correct, not talking to his partners --

12 MR. COOPER: Your Honor, listen --

13 THE COURT: -- trying not to resolve disputes in  
14 accordance with the terms that the parties have agreed to.

15 MR. COOPER: I respectfully disagree with your Honor.  
16 I understand that's your position, that the partnership  
17 agreement respects every single dispute, but the way this was  
18 constituted, which predated Mr. Covarrubias even being involved  
19 in this, was that disputes involving Lusad would be in Mexico  
20 under Mexican law. All the instances of the crimes here, of  
21 the allegations, were in Mexico. You can disagree, but the  
22 Mexican courts may take a different position, and the Mexican  
23 courts have submitted certain orders, and Mr. Dunn, all he  
24 wants to say is --

25 THE COURT: They submitted *ex parte* orders --

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1 MR. COOPER: That has not been established in the  
2 evidence unequivocally.

3 THE COURT: Mr. Cooper, it's the only evidence I've  
4 got. You haven't given me a scintilla of evidence that it's  
5 not true. They have sworn, on oath, that they got no notice of  
6 any of this. And you have not given me a scintilla of evidence  
7 that that's not true. Not a scintilla.

8 MR. COOPER: Then I would also have to give you all  
9 the procedural posture of how things are done in Mexico, and I  
10 wasn't prepared to do that, and I'm not an expert. It may very  
11 well be that *ex parte* orders are perfectly reasonable. What we  
12 don't have in dispute is that you do have two orders barring  
13 their activities. But, your Honor, I don't even want to go --

14 THE COURT: I have to tell you, I'm giving zero comity  
15 of any order of a Mexican court that purports to say that I  
16 can't do what these people told me I can do.

17 MR. COOPER: Your Honor, can we just bring it to  
18 exactly why we're here. We are here because the petitioners  
19 want to let Wednesday come and go and no bids be made, or no --

20 THE COURT: I actually don't think that's what they  
21 want. I think that they want to be treated like partners.  
22 That's what I think they want.

23 MR. COOPER: Okay. Your Honor --

24 THE COURT: I don't think they want their business to  
25 be stolen out from under them by a big-time Mexican

J5d1espa

1 businessman.

2 MR. COOPER: Your Honor --

3 THE COURT: That's what I think they want.

4 MR. COOPER: Okay. But if Mr. Covarrubias wanted to  
5 do that, he would not have made the ownership in the structure  
6 that already exists, which gives them a 50 percent benefit.  
7 That makes absolutely no sense. If he really wanted to steal  
8 it, he wouldn't have put it in the structure. There's a case  
9 we cited which I think is extremely relevant. Was not cited by  
10 the petitioners. May I bring a copy of it up. It's a Second  
11 Circuit decision --

12 THE COURT: I'm aware of *Faiveley*. I've read it.  
13 I've used it. Sometimes it's appropriate; sometimes it's not.

14 MR. COOPER: This is a bid on a concession that says  
15 that's not irreparable harm, your Honor. That's what this is.  
16 That was an MTA bid and this is a bid in Mexico.

17 THE COURT: Sorry. I'm listening. I wanted her to do  
18 something. She sent me a note. I asked her to do something.  
19 Now I'm entirely focused on you.

20 MR. COOPER: Thank you, your Honor.

21 Your Honor, there's a line of cases that petitioners  
22 cite about taking, misappropriating trade secrets is  
23 irreparable harm. The Second Circuit, in a subsequent case --  
24 again, not cited -- addresses that line of reasoning. It says  
25 it's wrong. I mean, I can hand you the decision. I can read

J5d1espa

1 this portion. But I think it is exactly on point. I think it  
2 would be --

3 THE COURT: And which case is this?

4 MR. COOPER: *Faiveley*.

5 THE COURT: Yes, *Faiveley*. I've read *Faiveley* a  
6 million times.

7 MR. COOPER: Okay. So if you want -- I think most of  
8 the disputes that have come up today are arbitration disputes.  
9 I mean, there's been a lot of back-and-forth, but that record  
10 is going to be way fuller when this arbitration happens.  
11 You're being asked to --

12 THE COURT: Certainly true. Certainly true. I'm not  
13 the person who's going to do anything except decide whether  
14 there's a likelihood of success on the merits in the  
15 arbitration. I'm not going to resolve any of those disputes.

16 MR. COOPER: And irreparable harm.

17 THE COURT: Correct.

18 MR. COOPER: Okay. And --

19 THE COURT: I will answer both questions, by the way.

20 MR. COOPER: I understand. You also have the  
21 equities. You have the equities of one side having put in all  
22 the money and the other side having put in no money. You also  
23 have the issue of public policy of a New York court telling  
24 Monterrey that they can't get this bid for, you know, digital  
25 service in 38 or 28,000 taxicabs. I mean, this is not a

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1 situation where an injunction is proper. If they want to argue  
2 not being in the governing body of Nuevo León was a breach,  
3 they can get compensated, and frankly, if this goes through,  
4 they're going to make more money than their claim is even going  
5 to be. But that doesn't mean we misappropriated --

6 THE COURT: How are they supposed to think that, when  
7 the board resolution specifically says that the Mexican  
8 subsidiary that's going to be incorporated to bid in Monterrey,  
9 Nuevo León will be a subsidiary of Llbre Holdings, LLC, not  
10 Lusad, but you've incorporated something that is a subsidiary  
11 of Lusad?

12 MR. COOPER: An indirect subsidiary, your Honor.

13 THE COURT: That's not what this is. This is to be a  
14 subsidiary of Llbre Holdings, LLC, which is a Delaware  
15 corporation.

16 MR. COOPER: I don't think that's even their argument.  
17 That would be so hypertechnical, your Honor.

18 THE COURT: Hypertechnical? "He signed a photocopy,  
19 that's a forgery"?

20 MR. COOPER: Somebody submitted a copy to this court  
21 and said three people signed it, but one of them was actually  
22 just another person photocopying it on. I don't think the  
23 Court would accept a forged document.

24 But that's far afield, your Honor. What I want to  
25 talk to you about is whether there's irreparable harm here,



J5d1lespa

1 whether it makes any sense for any party here to have this  
2 registration -- and it's not even a bid, it's not even a bid --  
3 have this registration not go through on Wednesday. Everybody  
4 loses. The company loses. It makes absolutely no sense. And  
5 at the end of the day, if it goes through and they make money,  
6 they're a beneficiary of it.

7 Now for us to go appoint them to this Nuevo León,  
8 honestly, until I can be sure that would not violate a court in  
9 Mexico, I can't say for sure, but the bottom line is, nobody is  
10 misappropriating. Their order to show cause, make no mistake  
11 about it, is based on the fact that two companies, which aren't  
12 even correct -- one doesn't exist and one has no operations,  
13 Monterrey and Jalisco -- are running off and doing a bid with  
14 Monterrey, and that they have no interest in it. That is  
15 wholly inaccurate and wholly untrue. The company that is  
16 bidding on --

17 THE COURT: Jalisco is irrelevant at this point.

18 MR. COOPER: Correct. And Monterrey is irrelevant.  
19 The only one that's relevant is Nuevo León. That's the only  
20 one.

21 THE COURT: Excuse me. Monterrey, Nuevo León, it's  
22 the same thing, okay?

23 MR. COOPER: No, it's not the same thing, because they  
24 went to you in a declaration, in an order to show cause --

25 THE COURT: Yes, they thought the name was Monterrey.

J5d1lespa

1 It turns out instead of naming it for the capital of Nuevo  
2 León, they named it for the state of Nuevo León.

3 MR. COOPER: And they named it -- and they had no  
4 basis for that.

5 THE COURT: Oh, please. Oh, please. Oh, please.

6 MR. COOPER: Listen, if your Honor is inclined to --

7 THE COURT: You know, Mr. Covarrubias, who has  
8 engineered all these orders and injunctions and things like  
9 that in Mexico, I have a feeling that if he wants to arrange  
10 things in the next 36 to 48 hours so that it's quite clear that  
11 his partners are fully functioning members of the Nuevo León  
12 bidder, because it's really important to get the Nuevo León  
13 bid, I bet he probably can accomplish it. I'm just going to  
14 guess that he can accomplish that.

15 MR. COOPER: Okay. We will go back and discuss it. I  
16 can tell you, though, your Honor, it's our view that a finding  
17 of irreparable harm here would be --

18 THE COURT: I get that.

19 MR. COOPER: -- actually reverse of what the -- the  
20 order granting it would cause the irreparable harm, not the  
21 order denying it.

22 And we will go back. I understand what you're saying.  
23 I understand --

24 THE COURT: It's not an inconsequential argument.  
25 We've been going back and forth over it all weekend, she and I,

J5d1lespa

1 emails back and forth, all weekend.

2 MR. COOPER: At the end of the day, this could all be  
3 sorted out in the arbitration where we can talk about the two  
4 sets of books.

5 THE COURT: At the end of the day, this could all be  
6 sorted out if four people sat around a table with goodwill. At  
7 the end of the day.

8 MR. COOPER: I appreciate that, but the issue I take  
9 is you're casting aspersions on our side, and I would tell you,  
10 a close look at their papers will show you that virtually every  
11 accusation they made against us was false and we provided a  
12 document. Not having contracts, making payments that were  
13 illicit, all of them were untrue. I think it's unfair to make  
14 Mr. Covarrubias the bad guy here when he put in so much money  
15 into this venture and what he did was integrate Nuevo León into  
16 the structure. So if you want to say yeah, they don't get  
17 along, I totally concede that and agree, but I think putting  
18 the black hat on him is completely, completely unfair.

19 THE COURT: Okay. Well, I promised you that tomorrow  
20 morning you would have an opinion, and tomorrow morning you  
21 will have an opinion. And I assure you that the last words  
22 will be, whatever they are, whether they be in favor of the  
23 petitioner or in favor of the respondent, will be an  
24 anticipatory deny of any stay, because I don't want to see you  
25 tomorrow. And you can go to the Second Circuit if you want

J5d1espa

1 emergency relief and I don't give it to you, if you want a stay  
2 and I don't give it to you. Because whatever I do, I will do  
3 because I think it's the right thing to do.

4 But it's 10 after 3 and we'd better get to work.  
5 Thank you, all.

6 MR. COOPER: Thank you for hearing us.

7 MR. DUNN: Thank you for your patience and your  
8 attention, Judge.

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## INDEX OF EXAMINATION

Examination of:	Page
SANTIAGO LEÓN	
Direct By Mr. Dunn . . . . .	.17
Cross By Mr. Cooper . . . . .	.18
Redirect By Mr. Dunn . . . . .	.54
Recross By Mr. Cooper . . . . .	.69
FRANCISCO FLORES	
Direct By Mr. Cooper . . . . .	.80
Cross By Mr. Dunn . . . . .	102
Redirect By Mr. Cooper . . . . .	124
Recross By Mr. Dunn . . . . .	129
Redirect By Mr. Cooper . . . . .	130